

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
 : Case No. 1:16-CR-082-1  
 :  
 vs. : (Judge Kane)  
 :  
 WILLIAM CHANDLER AUGUSTA, :  
 Defendant :

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE YVETTE KANE  
UNITED STATES DISTRICT COURT JUDGE  
OCTOBER 31, 2017; 10:00 A.M.  
HARRISBURG, PENNSYLVANIA

FOR THE GOVERNMENT:

Meredith A. Taylor, Assistant United States Attorney  
United States Attorney's Office  
228 Walnut Street, Second Floor  
Harrisburg, PA 17101

Austin M. Berry, Trial Attorney  
United States Department of Justice  
Child Exploitation and Obscenity Section  
1400 New York Avenue, N.W., Suite 600  
Washington, D.C. 20005

FOR THE DEFENDANT:

Heidi R. Freese, Federal Public Defender  
Federal Public Defender's Office  
100 Chestnut Street, Suite 306  
Harrisburg, PA 17101

ALSO PRESENT:

Crystal Bard, United States Probation Officer

Lori A. Shuey  
Federal Certified Realtime Reporter  
United States Courthouse  
228 Walnut Street, P.O. Box 983  
Harrisburg, PA 17108-0983  
717-215-1270

lori\_shuey@pamd.uscourts.gov

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1           *THE COURT:* Good morning, counsel. We're here on the  
2 Augusta matter. I understand there's a preliminary matter that  
3 needs to be addressed.

4           *MR. BERRY:* Yes, Your Honor.

5           *THE COURT:* Okay. Mr. Berry.

6           *MR. BERRY:* Good to see you again. There's an issue  
7 with regards to Rule 26.2, which under the rule says that after  
8 the defense puts on a witness, I have an opportunity to stand  
9 up and make a motion before the court to ask for prior  
10 statements of that witness that are within the subject matter  
11 of his or her testimony.

12           It is a rule that I think is not as often utilized or  
13 understood in many contexts, and so in the interest of  
14 efficiency, I reached out to Ms. Freese last week and advised  
15 her that I would be making that motion. I realize it's not a  
16 rule of discovery, that I was not entitled to receive that in  
17 advance of this hearing, but I just wanted her to know that I  
18 would be doing that today at the conclusion of her witnesses'  
19 testimony, specifically Dr. Krueger.

20           There was some back and forth between Ms. Freese and  
21 I. She provided some documents and then basically took the  
22 position that she doesn't think that the email correspondence  
23 between her or her staff and Dr. Krueger or Ms. Luck would come  
24 within the rule. Our reading of the rule is essentially that  
25 if she believes that some of that is privileged -- certainly

1 things like her own emails to them very likely would be  
2 excluded, but the witnesses' statements back should come within  
3 the rule, in our view.

4 But in any event, what the rule says is, if you  
5 believe that some of that is privileged, then you're to provide  
6 that in camera for Your Honor to review and to make an  
7 in-camera decision without my input as to whether I'm entitled  
8 to it or not, and that's sort of the stalemate that we're at  
9 right now.

10 The last communication that we received from the  
11 defense was that the defense was not going to conduct a server  
12 search for these emails, and so I don't know the status,  
13 whether they've been gathered, whether they're available for  
14 Your Honor to review, anything along those lines, but I do know  
15 that it will be an issue because I will make that motion.

16 *THE COURT:* Mr. Berry, is Dr. Krueger the only witness  
17 involved in this 26.2 dispute?

18 *MR. BERRY:* No. To be fair, to be candid, I think I  
19 only initially asked for Dr. Krueger, not thinking about sort  
20 of -- we sort of divided and conquered here and not thinking  
21 about Ms. Luck, but she is calling, the defense is calling two  
22 witnesses, and so it would apply to both of those witnesses.

23 And specifically what I think exists, just to be  
24 clear, and I don't think it's a large volume of material, but I  
25 don't know -- just through experience, I suspect that it's not

1 a large volume of material -- that it would likely be email  
2 correspondence with these witnesses about the subject matter of  
3 their testimony that may or may not comport with their reports  
4 and what they're going to say on the stand. And that is  
5 essentially the purpose of 26.2, is to provide us an  
6 opportunity to compare and contrast those statements.

7 *THE COURT:* All right. Ms. Freese.

8 *MS. FREESE:* Thank you, Your Honor. I concur with the  
9 chronological request that was made by the government. Late  
10 last week the request was made for Dr. Krueger, and yesterday  
11 morning the request was made with respect to Ms. Luck.

12 I have carefully reviewed the rule, and to be  
13 perfectly candid with the court, that is correct, this is the  
14 first time I've received such a request from the government in  
15 relation to my work product with my agents, with my experts, or  
16 with witnesses that I've retained in this matter.

17 I've reviewed the rule carefully, and I've also  
18 reviewed a number of decisions, including this court's  
19 decisions in the civil context, and my initial position is that  
20 in order to be a statement under the rule, it would have to be  
21 relevant to the subject matter.

22 So in an abundance of caution -- my position is that  
23 it's not discoverable, that it doesn't fall under the rule. If  
24 the court determines that, in fact, it potentially does, my  
25 position is that it is privileged work product and that it

1 falls specifically under that doctrine.

2           Because I did not want to delay these proceedings, I,  
3 in an abundance of caution, do have with me today the emails.  
4 Late last night my staff and I did conduct a server search, and  
5 I have correspondence. It is not redacted because of the time  
6 constraints. It is simply PDFs of my email communications with  
7 both Dr. Krueger and Ms. Luck.

8           So I do have it available, and as I indicated to the  
9 court -- or, excuse me, to the government yesterday, obviously  
10 I would comply with any court order. But my initial position  
11 is that -- which is why my initial response to -- which was  
12 quoted in the United States' sentencing memorandum was that I  
13 don't think such a statement exists, because I was simply  
14 thinking about a traditional statement that I would request  
15 from the government, which is why I don't typically request  
16 their emails with their agents about strategy, about things  
17 like that, because I consider that to be work product.

18           So that's the state of affairs. I did not turn it  
19 over to the government because I didn't believe, frankly, that  
20 I could without a court order or that it fell within the rules  
21 of criminal procedure.

22           *THE COURT:* So what you're saying is that you have a  
23 collection of emails that may be, in the court's view, covered  
24 by the rule?

25           *MS. FREESE:* Today with me, Your Honor, yes. Late

1 last night I did compile PDFs of my email correspondence --  
2 again, I believe that this is as comprehensive as I can  
3 obtain -- my email correspondence with Dr. Krueger and my email  
4 correspondence with Ms. Luck.

5 *THE COURT:* And is it your view that all of the  
6 documents contained on that device are work product?

7 *MS. FREESE:* Yes, Your Honor.

8 *THE COURT:* All right. Counsel, how many witnesses do  
9 you have here today?

10 *MS. FREESE:* Your Honor, I have two professional  
11 witnesses, Louise Luck, who I'm not offering as an expert but  
12 who is a historian, you know, for the client.

13 *THE COURT:* Right.

14 *MS. FREESE:* And I have Dr. Krueger. And then I have  
15 three individuals who -- what I would call would be more  
16 traditional reading a statement to the court who have been  
17 acquainted with my client throughout his life.

18 *THE COURT:* Okay. Well, I propose that we proceed as  
19 follows: I would like -- I heard you say Dr. Krueger, and  
20 Mr. Berry said Dr. Krueger. Which one is it?

21 *MS. FREESE:* It is Dr. Krueger.

22 *THE COURT:* It's Krueger. Okay.

23 *MS. FREESE:* It's Dr. Krueger.

24 *THE COURT:* All right. Let's hear from Dr. Krueger,  
25 and then we'll move on --

1           MR. BERRY: I think she wants to go with Ms. Luck  
2 first.

3           THE COURT: Okay.

4           MS. FREESE: That is correct, Your Honor. I thought  
5 it made chronological sense to start with Ms. Luck.

6           THE COURT: Sure, however you want to go. Let's hear  
7 from the witnesses, and then we'll see where we are with these  
8 objections.

9           MS. FREESE: Thank you, Your Honor. Ms. Luck.

10          MR. BERRY: Could we ask that Dr. Krueger step out of  
11 the courtroom?

12          THE COURT: Yes.

13          MS. FREESE: Your Honor, I would request, because he  
14 has reviewed her report and her report and social history was  
15 part of his opinion in this matter, because he's an expert  
16 witness, that he be permitted to remain in the courtroom.

17          MR. BERRY: Experts are typically allowed to remain in  
18 the courtroom to view, for example, the government's experts  
19 and witnesses, but to the extent that he's going to watch the  
20 cross-examination of this witness to help aid him in the  
21 cross-examination, I think that's precisely what's not fair and  
22 what the rule excludes from him.

23                 He doesn't need to see her testimony to form the basis  
24 of his opinion. As she said, he's already read her report, so  
25 he should be excluded.





Direct/Freese - Luck

1 Q. Okay. And how are you currently employed?

2 A. I am the director and mitigation specialist for Court  
3 Consultation Services, a business that I started myself almost  
4 30 years ago.

5 Q. Okay. Now, do you also have experience with the New York  
6 Department of Corrections?

7 A. Yes.

8 Q. In what capacity?

9 A. Well, I started -- my first job while I was still in school  
10 obtaining my master's was an Orange County probation officer.

11 Q. Okay.

12 A. I did supervision and writing of reports on juvenile  
13 probationers. Then I went on to the adult division, and I  
14 worked there a number of years doing investigations and  
15 supervision of clients.

16 Q. And let me just stop you. When you say "investigations,"  
17 do you mean presentence investigations?

18 A. Yes, yes.

19 Q. Okay. Go ahead and continue.

20 A. Okay. And after that, I took a position with the New York  
21 State Division of Parole where I was an institutional parole  
22 officer. I prepared parole memorandums for incarcerated  
23 individuals, and I also, for a period of time, worked for the  
24 Department of Corrections as a correction counselor doing  
25 classification of inmates.

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1 Q. Okay. In your capacity as director of Court Consultation  
2 Services, have you prepared any social history reports for what  
3 we call juvenile lifers in Pennsylvania?

4 A. Yes, I have.

5 Q. Now, have you previously testified in court?

6 A. Oh, yes.

7 Q. Approximately how many times?

8 A. 30, 40.

9 Q. Okay. Have you ever testified in the Middle District of  
10 Pennsylvania?

11 A. Yes, I have.

12 Q. Did you prepare in this matter, were you retained by the  
13 Federal Public Defender's Office to conduct a social history  
14 and background investigation in this case?

15 A. I was.

16 Q. And did you, in fact, conduct that background  
17 investigation?

18 A. I did.

19 Q. Now, in preparation and during your investigation, did you  
20 review a number of documents?

21 A. Yes, I did.

22 Q. I'm going to ask you to take a look at what's been marked  
23 Defendant's Exhibit Number 2. It's in that large binder.

24 A. Okay. Okay, I'm there.

25 Q. And just let me know when you're there.

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1 A. I'm there.

2 Q. Okay. And do you recognize that document?

3 A. Yes.

4 Q. What is it?

5 A. It is the report that I prepared.

6 Q. Okay. And I'm going to ask you to take a look at -- it's  
7 not numbered Pages 2 and 3, but just behind your cover sheet,  
8 the documents reviewed.

9 A. Yes.

10 Q. Do you see where we are?

11 A. Yes, the documents reviewed sheet.

12 Q. And I'm going to ask you to take a look at those two pages.

13 A. I'm there.

14 Q. Does that accurately depict the documents that you reviewed  
15 during and in preparation for your investigation?

16 A. Yes.

17 Q. And then I'm going to ask you to take a look at the  
18 following page, which, again, is not numbered but would be Page  
19 Number 4.

20 A. Yes.

21 Q. Persons interviewed.

22 A. Yes.

23 Q. And does that accurately depict the individuals you  
24 interviewed --

25 A. It does.

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1 Q. -- as part of your investigation?

2 A. It does.

3 MS. FREESE: Okay. Your Honor, at this point I would  
4 move for the admission of Defendant's Exhibit Number 2,  
5 Ms. Luck's report.

6 THE COURT: Any objection to two, counsel?

7 MS. TAYLOR: No, Your Honor.

8 THE COURT: Exhibit 2 is admitted.

9 BY MS. FREESE:

10 Q. And, Ms. Luck, I would note, as you're familiar, this  
11 social history report has been previously provided to the  
12 court, so what I'd like to do this morning is really just touch  
13 on certain highlights in the chronology of William's life.  
14 Okay?

15 A. That's fine.

16 Q. So I'm going to first ask you -- and because I'm not  
17 tendering you as an expert, not looking for opinions, just  
18 simply your factual investigation. Okay?

19 A. Sure.

20 Q. So I want to go all the way back, really, to William's  
21 conception and the pregnancy and birth. Did you interview any  
22 witnesses that were able to give you information relating to  
23 this?

24 A. I did.

25 Q. Could you tell the court anything significant about that

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1 portion of the investigation?

2 A. Well, I think probably one of the most significant ones was  
3 when I went to the home of Ruben Augusta in Brooklyn. I  
4 knocked on his door. He was suspected to be the potential  
5 father. And it was early in the morning. It was earlier than  
6 8:00 a.m., and he was dressed and ready to go to work. He was  
7 working in the finance industry. And I told him what I was  
8 there for, and he said, I'm not a bit surprised that you came  
9 looking for me. And he was able to sit down and talk to me.  
10 He gave me about an hour of his time.

11 He explained that he was in a long-term relationship  
12 with William's mother, that they were college sweethearts, that  
13 they had intentions of being married, and there was a point in  
14 time within the relationship that she had come to him and told  
15 him that she was pregnant. And he was very happy about that,  
16 and they had put together a wedding date.

17 And during the pregnancy, there were suspicions that  
18 maybe she was involved with someone else. And it became  
19 confirmed later on that she had an affair with a Kenny Hunter.  
20 Simultaneously, when she was involved with Ruben Augusta, she  
21 had also been telling Kenny Hunter that he was the father of  
22 her child.

23 Now, his family had their own suspicions about the  
24 paternity and didn't believe it was Kenny's son. So it was a  
25 very, very traumatic time in their life. There were many, many

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1 arguments. The pregnancy was a very difficult one for her, and  
2 there was a lot of deception, a lot of secrets being told  
3 throughout. His --

4 Q. Now -- go ahead.

5 A. His birth was also difficult. He had a seizure. He was on  
6 phenobarbital for a period of time, and he had a lot of  
7 muscular atrophy following his birth.

8 Q. During the course of your investigation, did you actually  
9 receive a copy of a paternity test to show whether or not Ruben  
10 Augusta was the father?

11 A. Yes. He said, I have some very important papers that I  
12 want you to see. And I was down in his dining room, and he had  
13 gone upstairs in the bedroom. He had saved those papers all  
14 that time and brought them down to prove that he was not his  
15 father.

16 And it was very difficult because he was -- the baby  
17 was being brought around to his family being told it was his  
18 child up until about the time that William was about one and a  
19 half, two years old.

20 Q. And were there any other witnesses that you interviewed,  
21 Ms. Luck, that specifically talked about any of the trauma or  
22 tumult surrounding the pregnancy and birth of Mr. Augusta?

23 A. Yeah, Robin Bell was speaking to that, too.

24 Q. And what, if anything, did she tell you?

25 A. The same type of thing, that it was a difficult pregnancy,

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1 that there were questions regarding the paternity, and, you  
2 know, it was a very, very ugly time. There were a lot of  
3 fights within the relationship, with Ruben Augusta. Kenny was  
4 away for a period of time. He was in jail and in and out.

5 Q. And I just want to interrupt you. When you say "Kenny,"  
6 who are you referring to?

7 A. Kenny Hunter, who was later shown to be the biological  
8 father.

9 Q. Thank you for that clarification. Okay. Moving forward to  
10 what I would call sort of the early childhood years of  
11 Mr. Augusta, you know, what I would characterize maybe between  
12 the ages of five and eight, did you interview any witnesses  
13 that indicated there was any trauma or abuse to my client as a  
14 small child?

15 A. Oh, much. Before Kenny came into the picture, his  
16 situation with his mother appeared, from what we hear, to be  
17 quite -- well, once Kenny comes into the house, he doesn't like  
18 the way that William is being babied. He calls him a faggot,  
19 that he should dress up -- put on a dress. He's demoralizing  
20 William constantly.

21 There's frequent, frequent domestic abuse within the  
22 house, domestic abuse in terms of Kenny against the mother,  
23 Kenny with the grandmother, the mother and Kenny fighting with  
24 each other. There were episodes that William would be dragged  
25 out of the house in the middle of the night while he and the



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1 mother were fleeing to grocery stores and other places to hide  
2 from Kenny.

3 It was a horrible situation. He was frequently  
4 physically abused by Kenny. It was a nightmare of a situation  
5 growing up for him.

6 Q. Was there any evidence that his mother physically abused --  
7 let me just clarify, that William, my client, that his mother  
8 physically abused him?

9 A. Yes. There was -- when Kenny -- Kenny is in and out of  
10 their lives, and when Kenny left the house, the mother more or  
11 less took on the persona of the father at that point and  
12 becomes very, very aggressive with him. And there are reports  
13 that she chases him down and beats him like a man, just  
14 horrible things.

15 Q. And did that come from a witness?

16 A. Yes.

17 Q. A witness told you that?

18 A. Yes, to the point where she offered, one of the witnesses  
19 actually offered to take him in because she was so upset about  
20 the way he was being treated within that home.

21 Q. And who specifically told you that?

22 A. I think that was Nichelle.

23 Q. Did you learn through your review of records or your  
24 interviews of witnesses whether there were any suicide attempts  
25 by my client as a child?

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1 A. Yeah, there was a suicide attempt when he was approximately  
2 eight years old.

3 Q. And did you review any hospitalization records that verify  
4 that?

5 A. Yes. He was hospitalized by the time he was ten years old.

6 Q. Do you recall where that was, Ms. Luck? If I said it was  
7 at the Meadows, does that sound correct?

8 A. Yes, yes, that's correct.

9 Q. Okay. Was there anything significant about that  
10 hospitalization or records you reviewed?

11 A. Yes, it was quite a frightening ordeal for him with that  
12 hospitalization. He was restrained during that -- imagine  
13 being a young child at approximately ten years old and being  
14 put into physical restraints. It was just horrible for him.  
15 Another incident when you were asking about abuse, if I can  
16 just go back a little bit, would that be all right?

17 Q. Sure.

18 A. Okay. The father was extremely physically abusive,  
19 emotionally abusive. There was a situation that he was taken  
20 out to eat and not allowed to have food. Everybody else in the  
21 family was able to eat except for William. He was put down in  
22 front of his siblings, in front of everybody, and they created  
23 an atmosphere that he was the hated one within the family, and  
24 he was treated differently. He was the family scapegoat.

25 There was a situation that he had gone into, I think

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1 it was a McDonald's, and he wanted an adult meal instead of the  
2 kid's meal, and that's a few more dollars. And a lot of kids  
3 have big eyes and want to eat. He, in that case, did.

4 MS. TAYLOR: Your Honor, I'm going to object at this  
5 time. I didn't hear Ms. Luck indicate who was giving this  
6 information, who is providing this information.

7 MS. FREESE: I'll be happy to clarify, Your Honor.

8 BY MS. FREESE:

9 Q. Who told you specifically about this? You were just  
10 discussing a McDonald's incident. Who told you about that?

11 A. That was William.

12 Q. Okay. And what did he tell you?

13 A. He told me that on that particular episode, he had ordered  
14 that adult meal and it was too much for him to eat and his  
15 father forced him to eat that meal. And he got sick as a  
16 result of eating it, and he vomited, and his father made him  
17 eat the vomit.

18 Q. Okay. I'm going to sort of -- was there anything else  
19 about what I call the early childhood years or prepubescent  
20 years with respect to your investigation that was significant?

21 A. Yes, there was.

22 Q. And what was that?

23 A. He was a very, very isolated child. He didn't have any --

24 MS. TAYLOR: Again, Your Honor, if Ms. Luck could  
25 indicate where that information is coming from.

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1           *THE WITNESS:* We have that, I believe, even in the  
2 records from the Meadows. I think the mother had said that he  
3 hadn't had a friend the entire time. And then --

4           *THE COURT:* Can you just indicate whether you've drawn  
5 conclusions based on particular facts or are you reciting the  
6 facts as told to you?

7           *THE WITNESS:* I'm reciting as told.

8           *THE COURT:* Okay. Thank you. And what the source of  
9 the facts are.

10           *THE WITNESS:* Yeah, and I think that was the report  
11 from the Meadows where the mother had indicated that he was  
12 isolated and had no friends.

13 BY MS. FREESE:

14 Q. Did any of the other witnesses that you interviewed touch  
15 on the subject, as well, whether for -- you interviewed some  
16 teachers. Is that correct?

17 A. Yes.

18 Q. Okay. Did anyone else offer any information about whether  
19 or not he was isolated as a child?

20 A. He just started to make friends when he was about in high  
21 school.

22 Q. Okay. Is that what your investigation revealed, the  
23 witnesses you interviewed?

24 A. Yes, yeah.

25 Q. And so that's sort of where I want to go next, is what I

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1 would call the early teen years, which, I mean, his teenage  
2 years is actually when the conduct that's the subject of these  
3 charges started.

4 But let's go back to maybe 11, 12, 13, okay, those  
5 early teen years. Did you talk to anyone, including, of  
6 course, Mr. Augusta, that gave you information about what  
7 happened during this time in his life?

8 A. Yes. I interviewed a Janet Folson, a Marianne Krahulec, a  
9 Susan Fry, and a Cheryl Parsons.

10 Q. And what, if anything, were you able to determine -- and  
11 you also talked to my client. Is that correct?

12 A. Yes, yes.

13 Q. And I should ask you this, clarify this, approximately how  
14 long did you spend with Mr. Augusta?

15 A. About six hours.

16 Q. And during your conversation with him, did you elicit a  
17 social history from him?

18 A. Yes, I did.

19 Q. And that social history that you elicited from him, was  
20 that similar to the social history that you elicited when you  
21 were a probation or a parole officer?

22 A. No, we spent much shorter times. We would probably sit  
23 with our clients about an hour to an hour and a half, and we  
24 didn't have the luxury to be able to reach out and interview as  
25 many parties as we did. We usually based our social history on

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1 what our client told us, and then we would send some releases  
2 out. If we got the information back, that was great, we  
3 included it. But we really went to great extents to try to  
4 interview as many people as possible in this case.

5 Q. And did you do more than that here?

6 A. Yes, yes, clearly.

7 Q. Okay. So back to these witnesses during what I'm calling  
8 the early, you know, teen years that you interviewed. What, if  
9 anything, was significant about your investigation into these  
10 years of William's life?

11 A. That he was just starting to make friends. He had got  
12 involved in some theater and music. He was -- he tried to be  
13 kind to the people that he met. He tried to be a good friend  
14 to them, but it was difficult for him.

15 He never wanted to be home. That was a consistent  
16 thing. The teachers would say that he wanted to stay and help  
17 out extra time and try to be away from home as much as  
18 possible. That was a consistent message.

19 Q. And did William report to you in your interview with him  
20 any conduct or anything significant about this time in his  
21 life?

22 A. Yeah. During this period of time, he starts entering the  
23 chat rooms, and the chat rooms become sexualized chat rooms.

24 Q. At about what age did he report that that conduct started?

25 A. He starts entering the chat room about age 12.

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1 Q. And did he tell you anything about the nature of those  
2 discussions or who he was talking with?

3 A. He did.

4 Q. And what did he tell you?

5 A. He was talking to other individuals, other men, and  
6 eventually, like, older men, and they had become sexualized.

7 Q. Okay. Did he ever indicate to you whether these were  
8 typing discussions? Did they involve instances where the older  
9 men could see him or he was -- you know, sort of a Skype or  
10 something similar to that?

11 A. It eventually went to physical contact with these  
12 individuals.

13 Q. Over the Internet?

14 A. Over the Internet that he met them.

15 Q. Did he ever report meeting up with any of these  
16 individuals?

17 A. Yes.

18 Q. And what did he report with respect to that?

19 A. That he would have sex with them and try to do what they  
20 wanted him to do.

21 Q. And did he indicate the ages of any of these men?

22 A. That they were older, all different ages.

23 Q. What else about these teenage years or anything else with  
24 respect to your investigation that may have been significant,  
25 highlights of your report? Well, let me direct you.

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1 A. Okay.

2 Q. That's sort of a very broad question.

3 A. Yeah. Thank you.

4 Q. I'm going to ask you to take a look at Page 6 of your  
5 report.

6 A. Yes.

7 Q. Okay. And I'm going to ask you to take a look, actually,  
8 at the second full paragraph. It starts with the words,  
9 Records from that hospitalization.

10 A. Yes.

11 Q. So did you review any records that revealed that he  
12 suffered from posttraumatic stress disorder?

13 A. Yes, I did.

14 Q. And what, if anything, did those records indicate?

15 A. That he also suffered from staring spells, that he had  
16 flashbacks. This was the time that he was ten years old, so  
17 that was a little bit earlier. The hospitalizations said he  
18 had PTS flashbacks for the last five years and had school  
19 related anxiety. He was very isolated in school during those  
20 early years.

21 Q. That was another question about the school records that you  
22 reviewed. Did you -- was there any evidence of bullying or  
23 anything like that with respect to his attendance at school?

24 A. Yes. He was bullied from early on. His demeanor was  
25 different than the other -- he was very bright, but I think he



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1 had a little bit more maybe an effeminate demeanor. He was  
2 very isolated by other children.

3 Q. Did he report to you any specific instances of bullying, or  
4 did you review that in any counselor records?

5 A. Yes, he was bullied even early on from the first school he  
6 was at at age six. He was frequently hit by the other boys and  
7 forced to -- well, he had a sexual act with one of the boys at  
8 six years old.

9 MS. TAYLOR: Again, Your Honor, I would object to this  
10 testimony and ask that the witness indicate where this  
11 information is attributed to or whom she's attributing it to.

12 THE COURT: Okay. Could you back up and --

13 THE WITNESS: That particular -- the sexual aspect of  
14 it was through William. And I did make an attempt to  
15 interview -- I mean, I had a name of a young man, and I went to  
16 his home on two occasions and knocked on that door and made --  
17 you know, put a note on the door to have him call me. I called  
18 the family house to try to interview the young man, but they  
19 didn't call back.

20 BY MS. FREESE:

21 Q. And just so we're clear, when you say you attempted to  
22 interview the young man, what young man are you talking about?

23 A. This boy that was bullying him in school and the one that  
24 sexually, you know, touched him when they were six years old.

25 Q. Okay. So when you interviewed William, did he provide you

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1 with a name?

2 A. Yes, he did.

3 Q. And you attempted to run that down?

4 A. Yes. And I did, I found out where they lived, and I went  
5 to the home twice. And then my office ended up even asking the  
6 father if the young man could please reach us, but he never  
7 called back.

8 *THE COURT:* I just want to clarify, the sexual  
9 involvement with the other six-year-old, was it reported to you  
10 as being nonconsensual?

11 *THE WITNESS:* No, it wasn't reported as nonconsensual,  
12 but it was a situation with a boy that didn't like him, that  
13 was actually beating him up in school and bothering him. There  
14 were two twin brothers, and it was the one brother that was the  
15 one that did this with him. And I did go to their house on two  
16 occasions.

17 *THE COURT:* All right. Thank you.

18 BY MS. FREESE:

19 Q. Ms. Luck, I think that concludes my specific questions, but  
20 I just want to summarize it by indicating, is everything in  
21 your report an accurate account of your investigation in this  
22 matter?

23 A. Yes.

24 Q. Is there anything about the investigation that was  
25 significant that you did not include within your report?

1 A. No.

2 MS. FREESE: Your Honor, that concludes my questions  
3 for Ms. Luck.

4 THE COURT: For the government.

5 MS. TAYLOR: Your Honor, at this time I would request  
6 the statements of Ms. Luck pursuant to 26.2.

7 THE COURT: What statements are there?

8 MS. TAYLOR: Specifically what I'm referring to are  
9 any statements that would be contained in the email  
10 communications.

11 MS. FREESE: Your Honor, to the best of -- I mean, my  
12 collection last night, and I did attempt to review them when I  
13 was saving them, they are discussions between the two of us  
14 about her invoices, receipts being paid, traveling here to  
15 testify. There was, in this case, a draft report that was  
16 prepared by Ms. Luck. It was not a final report. There were  
17 grammatical changes.

18 There is one communication where, you know, we don't  
19 discuss the substance of that, I simply indicate to her I would  
20 like it to be easier to read, and so she redoes the report,  
21 adds some grammatical changes, and sends it back to me. That  
22 is, what I would say, a summary, setting up phone conferences,  
23 logistics of her travel here and retention.

24 THE COURT: All right. Ms. Taylor, which of these are  
25 you seeking to use in your cross-examination?

1           MS. TAYLOR: Well, Your Honor, I haven't had a chance  
2 to review any of them. You know, if Ms. Freese would like the  
3 court to review them briefly in camera to see if any of them  
4 are privileged. I'd like an opportunity to review any of them  
5 that are relevant to Ms. Luck's -- relevant to this case and  
6 that fall under 26.2 before we proceed with her  
7 cross-examination. So any that aren't privileged, I'd like an  
8 opportunity to review briefly.

9           MS. FREESE: I believe they're all privileged. She's  
10 my agent, I retained her. She's open to cross, she's  
11 available, she prepared a comprehensive report. They were  
12 prepared in preparation for litigation. I think that all of my  
13 communications are an extension of the attorney-client  
14 relationship.

15           She's here. Certainly her compensation, all of those  
16 things are fair game. Her detailed invoices, Your Honor, I  
17 would argue, are privileged in the sense that they also  
18 reference other cases she worked on. Some of the receipts  
19 indicate other people who have retained her services.

20           So if the court believes that they -- I'm invoking the  
21 work product privilege, and if the court orders, as I've  
22 indicated, I certainly have -- everything I could attempt to  
23 collect within 18 hours is here.

24           And there are, by the way, I should indicate to the  
25 court, there are not hundreds of emails. Our email

1 communication was actually quite limited. I usually  
2 corresponded with her assistant.

3 *THE COURT:* All right.

4 *MS. TAYLOR:* Well, Your Honor, we're not interested in  
5 the invoices or in any of Ms. Luck's other clients, obviously,  
6 but certainly anything that has to do with draft reports or  
7 anything that appears to be substantive as to Mr. Augusta's  
8 case and involving Ms. Luck fits within 26.2.

9 *THE COURT:* All right, counsel. Let me have -- do you  
10 have them separated by Dr. Krueger and Ms. Luck?

11 *MS. FREESE:* I believe so. I asked our computer  
12 systems administrator this morning to do just that.

13 *THE COURT:* All right. Would it be obvious to me if I  
14 opened the device that you're supplying or will I need your  
15 assistance to review them and determine which of these you  
16 claim to be privileged?

17 *MS. FREESE:* It may be helpful, Your Honor, if I get  
18 it started to expedite the process. But I haven't actually  
19 viewed it because of the time constraints. My CSA did it early  
20 this morning. So I believe -- I asked him to separate it into  
21 folders, but I haven't actually viewed this flash drive.

22 *THE COURT:* How long do we have your witnesses?

23 *MS. FREESE:* Today.

24 *THE COURT:* Just today. It might make sense to hear  
25 from Dr. Krueger and then come back to this witness.

1           MS. FREESE: For cross-examination?

2           THE COURT: Yes, yes.

3           MR. BERRY: So just to be clear, Your Honor, after  
4 Dr. Krueger's testimony, we'll make the same motion. I guess  
5 at that time is when Your Honor will review --

6           THE COURT: Yes.

7           MR. BERRY: -- both sets of emails, and then we'll  
8 come back and do seriatim the crosses?

9           THE COURT: Yes.

10          MR. BERRY: Okay. Thank you.

11          THE COURT: Would you step down, please.

12          THE WITNESS: Sure.

13          MS. FREESE: Your Honor, I've asked Ms. Luck to step  
14 out --

15          THE COURT: Yes.

16          MS. FREESE: -- while Dr. Krueger testifies, as well.

17          THE COURT: Okay. Thank you. Come forward, if you  
18 would, please. Good morning, Doctor.

19          DR. KRUEGER: Good morning.

20          RICHARD KRUEGER, M.D., called as a witness, having been  
21 duly sworn or affirmed, testified as follows:

22          COURTROOM DEPUTY: For the record, please state your  
23 full name.

24          THE WITNESS: Richard Bohn Krueger.

25          COURTROOM DEPUTY: Could you spell your last name,

1 please.

2 *THE WITNESS:* K-r-u-e-g-e-r.

3 *COURTROOM DEPUTY:* Thank you.

4 DIRECT EXAMINATION

5 BY MS. FREESE:

6 Q. Good morning, Dr. Krueger.

7 A. Good morning.

8 Q. Dr. Krueger, if you could, could you please tell the court  
9 about your formal education?

10 A. Yes. I went to undergraduate college at a place called  
11 Albion College in Southern Michigan. I went to medical school,  
12 graduated from Harvard Medical School in 1977. I had training  
13 in internal medicine at the Boston VA Hospital from '77 to '80,  
14 1980, and became board certified in medicine in 1981, 1980 to  
15 1981.

16 I did a psychiatry residency at Boston University and  
17 became board certified -- from 1980 to 1983 and became board  
18 certified in psychiatry in 1984. I subsequently have had  
19 experience and been board certified in forensic psychiatry and  
20 addiction psychiatry for ten-year periods on three occasions.  
21 I just passed my boards in 2016 again for ten years.

22 Q. Okay. So what are the current certifications that you  
23 hold?

24 A. Well, I'm board certified in psychiatry, board certified in  
25 internal medicine, board certified in addiction psychiatry, and

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1 board certified in forensic psychiatry.

2 Q. And where are you currently employed?

3 A. I am self-employed. I'm also employed four days per week  
4 by the New York State Psychiatric Institute, which is a state  
5 psychiatric research hospital in Manhattan.

6 Q. Okay. And do you also do work with the Sexual Behavior  
7 Clinic?

8 A. Yes. My job title -- well, actually, I'm a Clinical  
9 Specialist II on the sort of payroll, but my function is to be  
10 medical director of the Sexual Behavior Clinic, which is a  
11 clinic which has existed for some 30 years at New York State  
12 Psychiatric Institute, which offers a program of treatment to  
13 juveniles who committed sexual offenses.

14 Part of the clinic's responsibility and my  
15 responsibility is to advise the various individuals in the New  
16 York State Office of Mental Health on the evaluation, risk  
17 assessment, and treatment of sexual offenders within the Office  
18 of Mental Health System, which I've done for 20-plus years.

19 Q. Okay. And during the course of your experience, have you  
20 specifically conducted sex offender evaluations?

21 A. Yes.

22 Q. Approximately how many, ballpark?

23 A. I would say, ballpark, a thousand.

24 Q. And what about mental health evaluations, have you  
25 conducted them?



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1 A. Ballpark, about 5,000 in my career overall.

2 Q. And have you published peer-reviewed articles?

3 A. Yes.

4 Q. And are they detailed in your CV?

5 A. Yes.

6 Q. I'm actually going to -- well, let me just ask you this,  
7 how about case reports or any chapters in books, are you  
8 published in any of these areas?

9 A. There are a number of chapters. I think there are some  
10 case reports. There are a fair number of peer-reviewed  
11 articles. These are all detailed in my CV.

12 Q. And I'm going to ask you to take a look at that large  
13 binder that's up in front of you.

14 A. Okay.

15 Q. If you go to Tab 3.

16 A. Okay.

17 Q. And are you there?

18 A. Yes, I am.

19 Q. Do you recognize that document?

20 A. Yes.

21 Q. And what is that?

22 A. It's my CV as of May 3rd, 2017.

23 MS. FREESE: Okay. Your Honor, at this point -- well,  
24 I would first move for the admission of his CV, which I have  
25 marked as Defendant's Exhibit Number 3, but the government has

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1 just indicated that they have no objection at this point to me  
2 tendering Dr. Krueger as an expert. And we would be offering  
3 him, Your Honor, in the area of an expert of forensic  
4 psychiatry and sex offender evaluation.

5 *THE COURT:* He'll be so qualified.

6 BY MS. FREESE:

7 Q. Now, moving along, you were retained by the Federal Public  
8 Defender's Office to conduct an evaluation in this case. Is  
9 that correct?

10 A. Yes.

11 Q. Okay. And did you, in fact, conduct an evaluation --

12 A. Yes.

13 Q. -- of Mr. Augusta?

14 A. I did.

15 Q. And did you meet with him?

16 A. I did.

17 Q. And approximately how long did you spend with him?

18 A. I think for about four or five hours.

19 Q. Okay. And did you review a number of other documents as  
20 part of your analysis and evaluation in this matter?

21 A. I did.

22 Q. And I'm going to ask you to then just turn to Number 4 in  
23 that large binder.

24 A. Yes.

25 Q. And that's thick, but I'm going to ask you to look through

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1 that, to page through that. The first portion, is that a copy  
2 of your report?

3 A. Yes. Under four, it's a copy of my report, yes.

4 Q. And that's a report you prepared in this matter?

5 A. That's correct.

6 Q. And behind that then would be some of the raw scoring data  
7 that you provided to my office as part of your evaluation. Is  
8 that correct?

9 A. Well, under Item Number 6, there is a copy of the basic  
10 testing that I did.

11 *MS. FREESE:* Okay. Your Honor, at this point I'm  
12 going to offer the report prepared by Dr. Krueger, which was  
13 also appended to our sentencing memorandum, into evidence at  
14 this time.

15 *THE COURT:* That would be Exhibit 4?

16 *MS. FREESE:* That's correct, Your Honor.

17 *MR. BERRY:* And just to be clear, Your Honor, are we  
18 admitting the 16-page document only, or are we admitting the  
19 16-page document along with what appears to be, I don't know,  
20 an inch thick of pages of the SCID, the S-C-I-D, that says,  
21 Tests, slash, Risk Assessment Instruments, which is still  
22 behind Tab 4, and an even thicker stack which is what the  
23 doctor just identified as the actual risk assessment  
24 instruments, diagnostic instruments that he utilized under Tab  
25 6? It's unclear to me what we're offering.

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1           MS. FREESE: And, Your Honor, my apologies, I'm only  
2 offering the report itself into evidence.

3           THE COURT: So that would be the 16 pages?

4           MR. BERRY: The 16 pages?

5           MS. FREESE: That's correct, Your Honor.

6           THE COURT: Okay.

7           MR. BERRY: No objection, Your Honor.

8           THE COURT: Exhibit 4 is admitted.

9 BY MS. FREESE:

10 Q. Okay. So the court has, as you know, had the benefit of  
11 reviewing the report, your report. I'm going to ask you to  
12 turn to Page 2 of your 16-page report.

13 A. Okay.

14 Q. And that details, as of the date that you prepared this  
15 report, some documents that you reviewed. Is that right?

16 A. Yes.

17 Q. Okay. Now, since that time, you've also reviewed the  
18 presentence report that was prepared by the probation officer  
19 in this matter. Right?

20 A. Yes.

21 Q. And you prepared the sentencing memoranda filed by both  
22 parties. Is that right?

23 A. I reviewed the sentencing memoranda, yes.

24 Q. Okay. Now, I'm not going to ask you to recount the social  
25 history because, well, Ms. Luck testified, and, again, the

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1 court has reviewed the report.

2 But what I am going to ask you to do, Dr. Krueger, is  
3 to identify any significant factors about his prior social  
4 history with respect to your evaluation. Was there anything  
5 about his social history that was significant to you in  
6 reaching your conclusions?

7 A. Well, I would say there's a lot. I think in the first  
8 instance, he was a product of a -- this is not quite a social  
9 history, but appropriate medical history, he was a product of  
10 this complicated pregnancy. He had, I think, some significant  
11 brain issues, seizure disorder and so on, yet he emerged from  
12 this with an IQ of 124. That's overall quite a remarkable  
13 occurrence.

14 He was subjected to very significant physical abuse on  
15 the part of both his mother and his father, which I think  
16 Louise Luck documented. I think he had a -- there were a lot  
17 of moves. He had a very unstable childhood going from place to  
18 place. It sounds like he was not supervised as well as he  
19 might have been.

20 He continued in school and graduated from school,  
21 which I think is quite remarkable given the overall  
22 circumstances, and appeared to have some interest and aptitude  
23 in the arts.

24 And he was quite an unhappy child. He was somewhat  
25 effeminate. He was very bullied. At one point early on he

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1 attempted suicide. He had a brief psychiatric hospitalization.  
2 And I think those would be the main, main characteristics.

3 Q. Was there anything that you reviewed to indicate that he  
4 had any prior sex offender treatment of any type?

5 A. He had had -- there was nothing I reviewed to suggest that.  
6 It appeared that he did not.

7 Q. Okay. And was there any evidence of what I'm going to call  
8 prior imposition of a legal sanction or any prior criminal  
9 convictions?

10 A. This was his first -- these two arrests, the state arrests  
11 and then the federal arrests were the two arrests. I think  
12 he -- when I spoke with him, he characterized when he was a  
13 juvenile that he had somehow been arrested for purportedly  
14 assaulting his grandmother, but I discussed, and there's no  
15 legal record of this, there's no evidence of conviction, so  
16 this could have been his misunderstanding.

17 Q. Well, let me ask you about the -- whether or not that's a  
18 significant fact. Is prior imposition of a legal sanction, as  
19 part of your analysis, a significant fact or not?

20 A. Yes, it would be.

21 Q. Why?

22 A. Because generally associated with the risk of recidivism  
23 would be, first of all, the imposition of a legal sanction. If  
24 somebody has been arrested as a juvenile or as an adult, this  
25 would create a history that would suggest that somebody is

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1 antisocial. That's one element.

2 The second element is if they have been arrested and  
3 sanctioned, this would then impose some deterrence on them.  
4 And the question in assessing sexual offenders is -- really any  
5 offender is whether they respond to this imposition of a legal  
6 sanction. And if one has been imposed and they don't respond  
7 to it, this tells you a lot.

8 In this case, there was no prior legal sanction, so  
9 this is basically a first arrest. The fact that there were no  
10 prior legal sanctions which he then went on to violate is, I  
11 think, notable.

12 Q. And I want to touch upon a sexual history, his self-report  
13 and, of course, the records that you reviewed. Did you ask him  
14 about prior sexual abuse?

15 A. I did.

16 Q. And what was his response?

17 A. He said that he had not been sexually abused. I regularly  
18 ask this as part of my assessment of sexual functioning. I  
19 then -- within the information provided, it was evident that  
20 he -- he gave a history of having engaged in sexually related  
21 chatting, cybersexual interactions from 12 or 13 onwards with  
22 adults, not with peers but with adults. This would certainly  
23 be considered sexual abuse.

24 I was kind of struck that there was no history of, you  
25 know, sexual abuse mentioned in the records or anything I could

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1 find. I actually sort of discussed this with Louise Luck a  
2 little bit. I was kind of surprised.

3 But in my view, this would constitute sexual abuse,  
4 the interaction of himself as a minor with adults over the  
5 Internet in a cybersexual way. This would be considered sexual  
6 abuse. Louise Luck agreed.

7 Q. But he didn't report it as that?

8 A. That's correct.

9 Q. So what I'd like to do next is really move to and highlight  
10 some of the testing that you did, talk about its significance.  
11 So let me first start with, Dr. Krueger, how do you determine,  
12 in a case like this, which tests to administer?

13 A. Well, generally I involve a series that I use regularly to  
14 assess sexual offenders, which is basically the series that was  
15 applied here. I think that within, say, forensic psychiatry,  
16 individuals -- or the assessment of sexual offenders,  
17 individuals, experts are free to develop and use their own sort  
18 of package of instruments.

19 You want to use, as much as possible, agreed-upon  
20 standard instruments, from a psychiatric point of view  
21 agreed-upon and validated psychiatric instruments. And this is  
22 the sort of final composition of what I use. So these are --  
23 this basically presents in order the package that I usually  
24 use, and I have used it for many years. It has been pretty  
25 stable for many years.



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1 Q. Okay. And I just -- you've already been qualified as an  
2 expert, but I think this is relevant to your credibility. Have  
3 you, you know, received training and actually traveled the  
4 world on this topic?

5 A. Yes, I would say -- so the diagnostic manual that's used to  
6 assess, to determine psychiatric disorders is called the  
7 Diagnostic and Statistical Manual published by the American  
8 Psychiatric Association. And the New York State Psychiatric  
9 Institute and Columbia have had a large role in this going  
10 forward. And the most recent edition was Diagnostic and  
11 Statistical Manual, Fifth Edition, DSM-5.

12 And I was involved for five years in the writing and  
13 revision of the sexual disorders and the paraphilic disorders  
14 chapter of that manual. Actually, my areas of specialty were  
15 sexual masochism, sexual sadism, and paraphilic coercive  
16 disorder, and I published in articles regarding at least the  
17 former.

18 Subsequent to that, I was invited to revise, help  
19 revise the classification manual which is used by most of the  
20 world called the International Classification of Disease. So  
21 the current manual is ICD-10, International Classification of  
22 Disease, Tenth Edition.

23 So for the past six years I've been involved in  
24 revision of the paraphilic disorders -- the whole sexual  
25 disorders chapter and the paraphilic disorders chapter of

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1 ICD-10. We've published our recommendations. I'm sort of the  
2 lead author on the publication in terms of revision of this  
3 chapter from ICD-10 to ICD-11.

4 Q. So before we get to -- thank you for that explanation.  
5 Before we get to the specific highlights of some of the tests,  
6 as part of the materials, did you review a report that was  
7 prepared by a Dr. Timothy Foley?

8 A. I did.

9 Q. And that was a report that I provided to you. Is that  
10 correct?

11 A. That's correct.

12 Q. Okay. And that was an evaluation of my client, William  
13 Augusta. Right?

14 A. Yes.

15 Q. All right. Now, one of the screens, one of the tests you  
16 did not do is something known as the Abel screen.

17 A. Yes.

18 Q. And I would like -- I'm curious, why did you not perform  
19 that test?

20 A. Well, actually, Dr. Abel had started our Sexual Behavior  
21 Clinic 35 years ago and then moved to Atlanta to develop this  
22 assessment instrument. I think that -- it uses something  
23 called viewing time. It presents a whole large series of  
24 questions.

25 It also relies on something called viewing time in

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1 which -- the idea is to, in some fashion -- similar to treating  
2 drug abusers or assessing drug abusers, you want to find some  
3 objective instrument that beyond their self-report will allow  
4 you to assess what their true sexual interest is.

5 The tradition or the best study instrument is penile  
6 plethysmography in the field where you have somebody attach a  
7 device to their penis and present stimuli and see how much  
8 arousal they have. This is refined in Canada. There are large  
9 issues of it in the U.S. and generally.

10 A sort of -- Dr. Abel tried this. He developed as  
11 a -- sort of a more succinct way of doing this something called  
12 viewing time in which he would present images of various  
13 categories, adults, children, and so on, to someone for them to  
14 rate and try and assess their degree of sexual interest.

15 He promulgated this. There have been only a couple of  
16 articles that really have -- that he's produced that have  
17 independently validated this. But within the field, I think  
18 there's a lot of concern that this is -- there's not adequate  
19 validation. We did this in the past. We don't do it any  
20 longer just because of the lack of substantial validation of  
21 it.

22 Q. Okay. Thank you. So let's move, if we could, to Page 9 of  
23 your report. And this is where you really summarize some of  
24 the tests that you administered in this case.

25 A. Yes.

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1 Q. So the first test I want to review with you is what you  
2 referred to as the sexual SCID?

3 A. Yes.

4 Q. S-C-I-D?

5 A. Yes.

6 Q. What is it about your administration of this test that's  
7 significant in this case, if anything?

8 A. Well, I would say sexual SCID stands for the Structured  
9 Clinical Interview for Diagnoses. Again, this is a methodology  
10 that was developed at Columbia and Psychiatric Institute and  
11 applied to a number of other psychiatric disorders, depression,  
12 mania, and so on.

13 And basically the case that -- it can become --  
14 there's unreliability in terms of making psychiatric diagnoses,  
15 and the SCID was a structured way of leading trained clinicians  
16 to achieve diagnoses. And using these written instruments, one  
17 is able to achieve a much higher rate of test/retest  
18 reliability, of interrater reliability, of validity. This is  
19 with the various other disorders.

20 Now, in the field of sexual disorders, there are --  
21 when I sort of wrote this SCID, there were five or six other  
22 SCIDs that had been used in various studies, some of which were  
23 reported in the American Journal of Psychiatry and otherwise.

24 But there's an issue in terms of the validation of  
25 this instrument, that it has not been broadly validated, but

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1 there is no such instrument to achieve a diagnosis of deviant  
2 sexual interest that has been validated.

3 In any event, this is a structured way of making a  
4 psychiatric diagnosis, and I have used this for ten years or  
5 more. And using this, Mr. -- so it would rely on an interview  
6 of the individual, but also all other available information.  
7 Typically one would use a criminal record. If there is  
8 Internet material, you would use that, collateral historians,  
9 victim statements, whatever information is out there.

10 Using this, I made a diagnosis of pedophilia, even  
11 though Mr. Augusta denied that he was sexually aroused by his  
12 brother. He made a criteria for sexual masochism. This was  
13 actually his preferred manner of sexual arousal. He also made  
14 a criteria for sexual sadism and for something called a sexual  
15 disorder not otherwise specified or hypersexual disorder  
16 characterized by compulsive masturbation, sex with others,  
17 pornography dependence, and cybersexual interactions.

18 This whole notion of sort of a hypersexual disorder, a  
19 compulsive sexual behavior disorder is something new. It's  
20 something that we recommended for inclusion in the DSM-5, which  
21 was not. But this is recognized more and more, and it will,  
22 for instance, be part of the ICD-11. But it would generally  
23 reflect that Mr. Augusta has been hypersexual, extremely sexual  
24 from his juvenile years onward, basically.

25 Q. The next test of note is, which you list is the Bancroft

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1 Self-Report Scale of Sexual Interest and Activity. Why did you  
2 administer that test?

3 A. Again, this is just a ballpark way of characterizing  
4 somebody's degree of sexual arousal or of sexual drive. This  
5 was a -- again, within the field, there are not good,  
6 well-validated instruments for the use of assessing sexual  
7 drive.

8 The Bancroft I would say was used in a modified  
9 version in an article which is published in the New England  
10 Journal of Medicine. Dr. Bancroft developed this 50 years ago  
11 for some inpatient studies. It basically asks an individual on  
12 a line or on a Likert Scale, on a scale from zero to five, how  
13 much they've been interested in sex in the past week and how  
14 many ejaculations they've had.

15 And I would do this for current -- for the week prior  
16 to the interview, and then just to get some idea of how  
17 somebody had been prior to their sort of incarceration or the  
18 imposition of a legal offense, I would ask for the same scores  
19 in an earlier time period.

20 This indicated Mr. Augusta said he was quite  
21 interested in sex, four out of five for both time periods, but  
22 that he had an average of fourteen ejaculations per week prior  
23 to his incarceration and three ejaculations per week before I  
24 interviewed him.

25 So, again, this would -- I mean, lots of individuals

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1 might want to sort of deceive and just sort of say they're not  
2 sexually interested at all. This was -- you know, this  
3 suggested that he was being forthright. It also suggested  
4 broadly that his hypersexuality had decreased with his  
5 incarceration, which is what you see.

6 Q. I was going to say, is that typical?

7 A. Yes, very typical.

8 Q. The next sort of significant, and I know we're going to  
9 jump over some of these, but is the Clinical Global Impression  
10 Scale which you had detailed on Page 10. Why did you  
11 administer this test?

12 A. Well, again, if you're looking at psychiatric disorders,  
13 they're quite complex. It becomes very hard to sort of rate  
14 them and rate their degree of severity. The Clinical Global  
15 Impression Scale acknowledged this. It was developed 50 or 60  
16 years ago at the National Institute of Mental Health.

17 And it basically asks a clinician who has some  
18 familiarity with the diagnosis in question in a particular  
19 area, how ill is this individual from one, not ill at all, to  
20 seven, among the most extremely ill patients that I've  
21 evaluated. And in this case, I gave Mr. Augusta a five,  
22 indicating that he was markedly ill. He was not among the most  
23 ill that I've evaluated, but he was markedly ill.

24 Q. And you indicate specifically that your focus there, if you  
25 go one, two, three, four, the fourth line from the bottom of

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1 Paragraph 3, that in this case, the focus of your estimation  
2 involved the sexual and paraphilic disorders. Is that right?

3 A. Yes, that's correct.

4 Q. How about the Abel and Becker Cardsort, why did you  
5 administer that test?

6 A. Again, this is something that was developed by Dr. Abel at  
7 the clinic. Basically, again, it's a quite subjective  
8 instrument. But you would -- it used to be that you would give  
9 individuals cards with various scenarios and they would sort  
10 them, but this has just developed into a questionnaire. And  
11 Mr. Augusta endorsed -- it's, again, an attempt to get somebody  
12 to reveal what their sexual interest is. It's obviously quite  
13 subjective.

14 But he reported an interest in sexual activity with  
15 males, adult males, females, transvestic fetishism, dressing up  
16 in clothes of the opposite sex, voyeurism, and masochism. This  
17 is consistent with the history that I obtained from him.

18 Q. And jumping down now to Number 7 on Page 10, the next test  
19 that I'd like you to highlight is, and I will probably  
20 mispronounce this, but is it the Derogatis?

21 A. It's the Derogatis, yes.

22 Q. Derogatis Interview for Sexual Function. Why was this  
23 significant, or why did you administer this test?

24 A. Well, again, there's a dearth, a lack of validated  
25 instruments, but this was developed by Leonard Derogatis for



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1 assessment of male sexual functioning. It gives you generally  
2 a ballpark idea of how somebody's sexual functioning is over  
3 the past month and compares this with norms which are within  
4 the grading pages of the instrument.

5 Mr. Augusta was in the fourth percentile, very low  
6 percentile in terms of sexual functioning, which, again, is  
7 what you would expect with somebody who is incarcerated. They  
8 just shut down. Some shut down, some don't.

9 Q. In your experience -- and we've just sort of covered this.  
10 You said some shut down, some don't. In your experience,  
11 Doctor, do you typically see a shutdown?

12 A. Yes, yes.

13 Q. And the next test would be the Coleman Compulsive Sexual  
14 Behavior Inventory. If you could, please, highlight for the  
15 court why you administered that test and if there was anything  
16 significant about Mr. Augusta's results.

17 A. Again, this is a test that was developed by Eli Coleman and  
18 others at the University of Minnesota just to establish how  
19 much -- how compulsive somebody's sexual behavior was and how  
20 much control they would have over their sexual behavior.

21 This indicated that he was -- that Mr. Augusta was  
22 quite compulsive when he engaged in this. This was the first  
23 point prior to his arrest. And compared with how he is -- how  
24 he was at the time I evaluated him, things had become much less  
25 compulsive. He was much less involved in compulsive -- he

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1 assessed his behavior as being much less compulsive.

2 Q. And what --

3 A. Meaning his degree of control had increased. I think that  
4 would be the better way to report this.

5 Q. And in your experience, what, if any, impact does  
6 incarceration typically have on them?

7 A. Again, it would sort of settle individuals down. They  
8 would become -- they stop doing whatever they're doing, in  
9 large part.

10 Q. The next test that I'd like to review is the  
11 Pathological/Problematic Sexual Behavior Scale.

12 A. This is, again, something called the YBOCS, Yale-Brown  
13 Obsessive Compulsive Scale, which presents various scenarios  
14 and which has been extended to other -- it was developed for  
15 obsessive compulsive disorder, but it has extended to many  
16 other disorders, body dysmorphic disorder, pathological  
17 gambling.

18 In this case, it has been applied to sexual behavior,  
19 and it gives some sense of how much an individual is involved  
20 with compulsive sexual behavior. In his case, he got a score  
21 of -- zero is sort of no involvement. He got a score of 24  
22 prior to his arrest and zero now, meaning that he, again, was  
23 not engaged in compulsive sexual behavior.

24 Q. Is that the type of result that you'd expect to see from  
25 someone incarcerated?

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1 A. Yes.

2 Q. Okay. And the final test under this portion of your report  
3 with respect to deviant sexual behavior was the Kinsey Scale.

4 A. Again, one would not assert that homosexuality is  
5 associated with or heterosexuality are associated with any  
6 particular increased risk of sexual -- of criminal sexual  
7 behavior, but this gives a ballpark idea of what somebody's  
8 sexual orientation is. And he indicated -- he circled a five  
9 out of six, six being exclusively homosexual. He was pretty  
10 much in that direction, but he had some interest in females.

11 Q. There are three tests with respect to the screenings you  
12 conducted on psychiatric syndromes that I'd like to highlight.  
13 Obviously all are included within your report.

14 The first test that I'd like you to touch on for the  
15 judge is the SCID or the SCID-I which you administered. Could  
16 you first explain why you administered the test and the  
17 significance of the results, if any?

18 A. Well, again, this is sort of the -- kind of  
19 original Structured Clinical Interview for Diagnoses. And I  
20 administer this pretty much in all the evaluations just to  
21 establish if there are any nonsexual psychiatric disorders that  
22 are -- that this individual has experienced.

23 And in this case, he -- this resulted in a diagnosis  
24 of Bipolar I disorder, which is where somebody has recurrent  
25 depression and hypomanic episodes and posttraumatic stress

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1 disorder, chronic, severe.

2 Q. And moving down to what's detailed as Number 13, my first  
3 question is, why do you -- what is the significance of alcohol  
4 abuse or evidence of alcohol abuse during the course of your  
5 evaluations?

6 A. Well, just substance use is such a common component to  
7 criminal behavior that I regularly assess for drug abuse and  
8 alcohol abuse just clinically and with these -- with a couple  
9 of screening instruments.

10 In this case, the Michigan Alcohol Screening Test, the  
11 MAST, he got a score of zero, suggesting that he -- being  
12 consistent with the history that he did not have alcohol abuse  
13 problems or a disorder.

14 Q. And the final test, again, in this category that I'd like  
15 to spend some time on is the Adverse Childhood Experiences  
16 scale. First, if you could explain to the court why you  
17 administered the test in this instance, and then I would like  
18 to talk to you a little bit about your results. So, first, why  
19 did you administer this test here?

20 A. Well, again, it's part of a -- kind of general of the sort  
21 of list of instruments, instruments that I use in sort of a  
22 general psychiatric assessment. It gives a broad ballpark but  
23 very substantive way of assessing how adverse somebody's  
24 childhood experience has been. This is really quite a  
25 well-validated test which I've used for many years.

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1           A high score is ten, a score of five is -- or six, I  
2 think he had, is -- suggests a very significant childhood  
3 adversity.

4 Q. Now, in your report on Page 12, you indicate that this  
5 score of six is what you called extremely elevated and, in  
6 fact, the worst you've encountered in your experience.

7 A. Yes.

8 Q. Explain that. In other words, you've done thousands of  
9 evaluations, so explain the significance of that.

10 A. I've been using this probably for the past three or four  
11 years.

12 Q. Okay.

13 A. So a hundred couple, maybe a hundred evaluations, a hundred  
14 plus. And it basically gives, presents ten questions to an  
15 individual which they answer, you know, were you sexually  
16 abused, were you physically abused, was a parent lost to you by  
17 incarceration, questions such as that.

18           And this was a high score, an elevated score. I  
19 actually -- I subsequently have done an evaluation where  
20 somebody had a score of seven, so this is no longer the most --  
21 the worst that I've seen.

22 Q. Okay. Now, you reviewed the government's sentencing  
23 memorandum in this case. Is that right?

24 A. Yes.

25 Q. And in it you saw that the government spent some time

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1 discussing this ACE scale in reference to the victim, one of  
2 the victims in this case. Is that correct?

3 A. Yes.

4 Q. And that specifically was something that we discussed this  
5 morning. Is that correct?

6 A. Yes.

7 Q. Okay. One of the assertions in the government's memorandum  
8 is that Mr. Augusta's crimes will most certainly shorten the  
9 life span of the victim based upon, at least in part, this test  
10 and the child's adverse experiences. Did you review that  
11 portion of the memorandum?

12 A. Yes.

13 Q. And you didn't evaluate Victim Number 1 in this case, did  
14 you?

15 A. That's correct, yes.

16 Q. You didn't evaluate any victims in this?

17 A. No. We don't usually do this in the course of such  
18 evaluations.

19 Q. Right. I mean, you were retained for the purpose of  
20 conducting an evaluation of Mr. Augusta. Correct?

21 A. Yes.

22 Q. What, if any, opinion do you have with respect to the  
23 application of these factors to Victim Number 1 to the extent  
24 that the government argues my client's conduct has shortened  
25 the life span of Victim 1?

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1 A. Well, I actually -- I'm not -- if I could be permitted, I  
2 just -- I have a copy of the test that I applied here, and I  
3 just want to see -- one question which emerges is, does one  
4 have to be an adult or of a certain age for this to be  
5 administered, and I'm not sure that's the case.

6 In any event, I sort of went through this. I mean,  
7 clearly Mr. Augusta's behavior towards Victim Number 1 could  
8 result in a score of two or three on this instrument, or two or  
9 three items. But overall, I think that -- I mean, this is  
10 basically a -- these are statistical matters, and I think that  
11 to draw a one-to-one correlation between a particular score and  
12 to say, to assert that it's going to decrease somebody's life  
13 by X amount I think is improper.

14 I would say that it would increase the risk of  
15 early -- the risk of early, earlier death of various physical  
16 or other diseases by a certain amount. The other element is  
17 that there are other matters in the environment of Victim  
18 Number 1 that would also contribute to whatever score this  
19 individual may have had.

20 Q. So is it -- and correct me if I'm wrong, I mean, are you  
21 able to score Victim Number 1 without actually evaluating him?

22 A. Sure, I believe one could. I guess the main question in my  
23 mind is, is there a minimum age at which point this has to be  
24 applied, can it be applied to kids that young.

25 I mean, it's sort of -- I think there are questions

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1 with prior to 18 and so on, which this may not be developed for  
2 individuals of such a minor age. I'm not that familiar with  
3 the instrument to be able to answer that.

4 Q. Okay. And next I'd like to focus on the risk assessment  
5 portion of your evaluation and the instruments you use. One of  
6 the risk assessment instruments was the Static-99R. Is that  
7 right?

8 A. Yes.

9 Q. Okay. Why did you select this instrument? Why did you  
10 administer this test in this instance?

11 A. Because it's the most validated, well-studied test,  
12 actuarial instrument for assessing the risk of reoffense. It  
13 was developed in Canada. It's been used widely in many  
14 countries. There's large literature in many countries that  
15 support its validity. So this is the one, one main instrument  
16 that I use.

17 Q. Okay. And what, if anything, was significant about  
18 Mr. Augusta's results?

19 A. Well, so there's this -- you can get a scale of minus three  
20 to plus twelve, and he had a score of four. Now, this puts him  
21 in a moderate, moderate high risk category. I think there's a  
22 new sort of set of scoring that a four may be in an above  
23 average risk category or even a high risk category.

24 Q. And is that now, Dr. Krueger?

25 A. This would be now, if he were released into the community



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1 now.

2 Q. Okay.

3 A. On the other hand, given that he's going to be incarcerated  
4 for, I'm not sure, a minimum of 30 years or 45 years -- crime  
5 is a young man's game, basically, and the older somebody is,  
6 the less risk they present of sexual recidivism.

7 So if he were to age out, I computed a score, a  
8 reduction of his score from four to two, which would put him in  
9 a -- still in a low moderate, a low moderate or only average  
10 category of risk.

11 Q. And that would be if released after 30 years?

12 A. Yes.

13 Q. Okay. Now, you're aware that he's actually serving a  
14 45-year sentence for the Commonwealth of Pennsylvania.

15 Correct?

16 A. Yes.

17 Q. So I'm going to ask you the same question. What if he were  
18 released in 45 years, what would that do to his score, if  
19 anything?

20 A. This would reduce it even more. I mean, I think there's  
21 sort of a threshold. If somebody is at least 60 or 65, maybe  
22 60, they get a big decrement, according to the construction of  
23 the instrument. So instead of minus one point, you get minus  
24 three points. This would substantially reduce his risk.

25 Q. Now, in the government's sentencing memorandum, they

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1 indicate that there's powerful evidence -- that's actually a  
2 direct quote from Page 38 -- indicating that recidivism rates  
3 for sex offenders do not appreciably decline as offenders age.  
4 A. This is flat out wrong. I mean, it's just -- there's vast  
5 literature that very much supports that the older -- that the  
6 older somebody is, the less likely they are to recidivate, both  
7 with respect to sexual crimes and nonsexual crimes.

8 *THE COURT:* Doctor, can I interrupt you there and ask  
9 you whether there is a difference in contact offenders and  
10 pornographers with these rates of recidivism?

11 *THE WITNESS:* This has been in much dispute. There is  
12 a new instrument that's developed by Michael Seto that looks at  
13 the risk for Internet offenders. I'm just blacking on the  
14 name. I'll think of it.

15 In any event, Mr. Augusta is clearly a contact  
16 offender, and I think this would sort of drown out or reduce  
17 the sort of consideration of the risk associated with child  
18 pornography. He's a contact offender. You would treat him  
19 basically as a contact offender.

20 If he were solely an Internet offender, there's a  
21 large literature, there's been a lot of debate -- actually, the  
22 instrument Michael Seto had developed, who is the world's  
23 authority, I would say, on pedophilia in Canada at the  
24 University of Ottawa, is called the CPORT, and this is coming  
25 into use.

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1           He would -- Mr. Augusta would have a high score on the  
2 CPORT in any event. He definitely would be considered a  
3 contact offender.

4           *THE COURT:* Okay. Thank you.

5           *THE WITNESS:* I would say that the fact that he is a  
6 contact offender makes very legitimate the use of these other  
7 instruments which were developed and based upon contact --  
8 assessments of contact offenders.

9 BY MS. FREESE:

10 Q. And, you know, based on, actually, the court's question, I  
11 do have a followup sort of question. In your community of  
12 psychiatry and among the scholars, has there been discussion of  
13 the Adam Walsh Act in the field itself?

14 A. Yes, I would say some. I mean, I think that there are some  
15 misunderstandings within -- I can't quote with great detail,  
16 but there is -- for instance, within the Adam Walsh Act, there  
17 are penalties for this sort of crime, contact, noncontact.  
18 There may be penalties regarding number of victims.

19           And both of these variables, for instance, have not  
20 been proven to be validated risk factors in terms of predicting  
21 risk of reoffense. And I think there's great, within the  
22 professional community, skepticism about many of the -- much of  
23 the construction of the Adam Walsh Act.

24 Q. The next sort of focus on the risk assessment instruments  
25 is the Sexual Violence Risk-20. Why did you administer this

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1 test on Mr. Augusta?

2 A. Well, again, this becomes an organized way of thinking of  
3 doing a risk assessment. This pushes an assessor to look for a  
4 number of factors which may be -- which should be considered in  
5 developing and assessing risk and treatment planning.

6 In this case, Mr. Augusta had a large number of  
7 factors. You can get a high of 20 factors. I would put zero  
8 to five as sort of a lower risk category, six to ten as a  
9 moderate risk. I rated him as having ten of -- say above ten,  
10 ten to fifteen is moderate, and above fifteen is high. This is  
11 my general gestalt in terms of assessing risk. He has a high  
12 number of factors.

13 Q. And with respect to these high number of factors, again, is  
14 there any age correlation? In other words, with respect to in  
15 45 years or 30 years with the same test, would you expect to  
16 see any results or is it simply unknown?

17 A. I would just have to take a look at the instrument, if I  
18 may. Let's just see. The order is not quite the order that I  
19 had organized these in. Well, my best guess would be that  
20 there's -- bear with me, please.

21 MS. FREESE: Your Honor, may I approach the witness?

22 THE COURT: Yes.

23 BY MS. FREESE:

24 Q. The government actually handed over a particular -- I'm  
25 going to ask you to take a look at the SVR-20 coding sheet. Is

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1 this -- you found it.

2 A. I have this. So, I mean, he would -- many of these factors  
3 are basically static factors, so I don't really think that  
4 they're going to be influenced much by incarceration.

5 Q. Okay. So these would be static factors probably and may  
6 not change as much with age?

7 A. That's correct.

8 Q. As opposed to the Static-99, if I understand your  
9 explanation?

10 A. The Static-99, likewise, is static. There are -- it looks  
11 at static factors, but age, in this case, is not static. It  
12 would be changeable. Static factors are something that are  
13 more malleable within a brief period of time, such as  
14 attitudes, degree of sexual drive, this kind of thing.

15 Q. The final risk assessment -- or, I'm sorry, actually the  
16 second to last is the SONAR. Now, the SONAR is an older scale.  
17 Is that correct?

18 A. That's correct.

19 Q. So why do you still use it?

20 A. Well, the SONAR was written to accompany the Static-99 and  
21 has been replaced by something called the STABLE and something  
22 else called the ACUTE.

23 These are basically instruments that are developed in  
24 Canada and are used by federal probation to give a ballpark  
25 estimate of somebody's -- of the degree of risk that a parolee

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1 will present to probation officers and how much attention that  
2 they should spend, how many resources they should expend in  
3 terms of initially following and subsequently following  
4 somebody.

5 So the Sex Offender Needs Assessment Rating scale was  
6 a pilot scale. It was actually published, and there's a  
7 publication, Sexual Abuse, that references this.

8 The two other manuals, the ACUTE and the STABLE, have  
9 been written, but they keep changing all the time. It was only  
10 recently, within a couple of years ago, that a stable manual  
11 was finally decided upon.

12 So I use some of these assessments for -- as part of a  
13 research project, and it helps to have a printed publication  
14 that people can refer to which is stable. So I just use this  
15 for that stability. It approaches the same sort of variables,  
16 although not in as much detail as the more contemporary  
17 instruments. He had a score of six, putting him in the, I  
18 think, moderate risk category.

19 Q. Okay. And what, if anything -- so that would be a moderate  
20 risk?

21 A. Yes.

22 Q. The same question with respect to that risk assessment  
23 tool. What, if any, impact would age have on it, on the  
24 results?

25 A. Well, I think that age would -- age is not particularly a

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1 factor there, but sort of treatment would have a substantial  
2 factor on it. These concern attitudes that -- cognitive  
3 distortions that an individual might have, as well as other  
4 factors which are changeable.

5 So there would be some, I would say, benefit with  
6 increased time provided -- I think it would be more dependent  
7 upon the therapy that somebody had received rather than just  
8 the passage of time.

9 Q. And the final risk assessment is detailed on Page 13, the  
10 Level of Service/Case Management Inventory. Again, why -- the  
11 first question is why, why did you administer this test, and  
12 then I'd like to talk to you in detail about your results.

13 A. Well, actually, I began using this again maybe six, eight  
14 years ago. I actually began using it in the context of  
15 assessing child pornography offenders.

16 There was no good risk assessment instrument then, so  
17 I approached the author, the main author of the Static-99, a  
18 guy named Karl Hanson, and said, Karl, what should I use, and  
19 he suggested this Level of Service/Case Management Inventory,  
20 which is validated against broad populations of criminals, but  
21 it doesn't really sort of exclude child pornography offenders.  
22 It can be used sort of as an aggregate, as an instrument for  
23 all comers.

24 And it's broadly used not only for sex offenders, but  
25 for more general offenders. And this is, again, broadly used

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1 in Canada. This is -- so that's why I used it. It just  
2 gives -- it's another tool that gives you some sense of -- some  
3 ability to assess somebody's risk. It has, actually, a benefit  
4 of including information on drugs and alcohol, which some of  
5 the instruments, other instruments, the Static-99 does not.

6 In terms of the specific score, he had a score of  
7 eight out of 43. The higher the score, the greater the risk.  
8 And this puts him in the fourth percentile, basically, in terms  
9 of risk of reoffense and need for services compared with  
10 individuals who are incarcerated and then the 25th percentile  
11 compared with individuals who are in the community. So  
12 ballpark, in a lesser risk category.

13 Q. Do those results, the results of that test, surprise you at  
14 all?

15 A. No. I mean, the sort of interesting thing about  
16 Mr. Augusta or notable thing is that he has no substantial  
17 prior criminal record, no prior criminal record. This is  
18 generally -- and this is consistent with that. He also has no  
19 substance use record. Both of those would increase his score  
20 substantially.

21 Q. I think that concludes my review of the tests. I do have  
22 some specific questions, though, about a couple of things in  
23 the government's sentencing memorandum.

24 First of all, on Page 23, the government references  
25 Mr. Augusta's psychosis. Based on your evaluation, did you



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1 find any evidence at all of psychosis?

2 A. No. I mean, he's not psychotic. There's no history of  
3 psychosis at all.

4 Q. And, additionally, and this is one of the things we  
5 discussed this morning -- give me one moment to get to it.  
6 There's a reference -- do you have a copy of the government's  
7 sentencing memorandum in front of you? If you don't, I'm happy  
8 to provide you with a copy.

9 A. I'm not sure if it's in this large --

10 Q. It's not.

11 A. Okay. I don't.

12 Q. So let me just --

13 *MS. FREESE:* May I approach, Your Honor?

14 *THE COURT:* Yes.

15 BY MS. FREESE:

16 Q. I'm just going to ask you to take a look at this. And I've  
17 turned it, actually, to Page 11. And I'm going to direct your  
18 attention towards the bottom of Page 11, Dr. Krueger.

19 A. Okay.

20 Q. Eleven, twelve, thirteen, I guess really into fourteen it  
21 discusses, perhaps, a suggestion by the defense or some  
22 correlation about child molestation and then later becoming a  
23 sex offender.

24 A. Yes.

25 Q. And did you review those portions of the sentencing

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1 memorandum?

2 A. Yes.

3 Q. Okay. In your vast experience, what are the statistics  
4 with respect to sex offenders and gender?

5 A. The vast majority of sex offenders are male, 90,  
6 95 percent. There are female sex offenders, but it's more a  
7 male kind of behavior.

8 Q. So knowing that, based upon your decades of experience, the  
9 government indicates at the top of Page 12, If being sexually  
10 abused makes one more likely to offend in a like manner, then  
11 perhaps Defendant can explain why girls, who make up a  
12 disproportionately large percentage of child exploitation  
13 victims, do not also make up an equally large percentage of  
14 child exploitation offenders.

15 So I'm interested, particularly, in whether you have  
16 any opinion on that statement.

17 A. Well, I mean, they make up some. I mean, I think that  
18 broad epidemiologic surveys indicate that roughly 20 percent of  
19 females and 10 percent of males will have been sexually abused.  
20 This is present in the U.S., in Canada, in Great Britain, and  
21 other studies. Of those who have been sexually abused, the  
22 vast majority don't go on to sexually abuse.

23 I think if you look at sexual offenders, I reviewed  
24 this literature some time ago, not more recently, but there's  
25 roughly -- and there are articles which are -- come down on

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1 either side of this, but that roughly somebody who commits a  
2 sexual offense has roughly twice the likelihood of having  
3 themselves been sexually abused.

4 So it becomes a risk factor, which, you know, I would  
5 say is much more operative in men. I'm not even sure if this  
6 stat is available for women or not. But when I looked at it,  
7 it was for basically male, for male populations.

8 Q. And there was also cited to in the government's memorandum  
9 some literature that suggested a defendant could fabricate an  
10 instance of sexual abuse for purposes of litigation, maybe  
11 by -- I think the quote was an enthusiastic defense attorney.

12 In your experience, you know, have you encountered  
13 this, where one fabricates that?

14 A. Sure. I mean, this happens -- this would be understood.  
15 In fact, he, Mr. Augusta, denied -- I asked him if he had been  
16 sexually abused. He denied this, repeatedly denied it.

17 Q. Did you ask him that more than once, Dr. Krueger?

18 A. Yes. I mean, I was quite surprised by this whole thing.  
19 And then sort of as I was writing this out, even in the time of  
20 the interview, it became -- it struck me that, I mean, as a  
21 juvenile, if he's interacting with adults in cybersexual  
22 interactions, he's clearly a victim in that circumstance and I  
23 would say sexually abused.

24 Q. So in conclusion, I just have a couple questions about  
25 specific opinions, whether or not you were able to reach them

Direct/Freese - Dr. Krueger

1 in this instance.

2 Based upon specifically the Static-99R, do you have --  
3 are you able to offer any opinion today to the court with  
4 respect to Mr. Augusta's risk of recidivism?

5 A. Yes.

6 Q. And what, if any, opinion can you offer?

7 A. Going forward, just by virtue of age and his scores, it  
8 would be sort of moderate low according to the old scoring,  
9 sort of average, I think, according to new scoring. My overall  
10 estimate is that I think that he would be at a moderate or low  
11 risk going forward.

12 Q. And based upon the fact that he's serving a 45-year  
13 sentence in state prison, what, if any, opinions are you able  
14 to offer about his risk of recidivism in 45 years from now?

15 A. Again, what I just said, had anticipated that, but I would  
16 say it would be a moderate low or low 45 years from now. It  
17 would be reduced if he were to have some therapy. I think it  
18 would be very well managed with, you know, tight conditions of  
19 federal probation, for instance.

20 In my opinion, he could be managed in the community  
21 now. I mean, federal probation has a very strong control over  
22 somebody. These were Internet crimes. They could easily  
23 monitor his Internet activity, his residence.

24 Q. But they were also contact offenses. I mean, you  
25 understand that.

Direct/Freeze - Dr. Krueger

1 A. I understand that, but, you know, there are many contact  
2 offenders -- we have a small sex offender program. There are  
3 many contact offenders that we monitor in the community.

4 Q. Do you have an opinion as to whether Mr. Augusta is a good  
5 candidate for treatment?

6 A. Yes.

7 Q. And why do you believe he's a good --

8 A. Yes, my opinion is that he would be, you know, good. I  
9 mean, look, he's bright, he's obviously motivated, and, you  
10 know, he's amenable to treatment, amenable to therapy.

11 Q. I want to sort of jump back even though this is in the  
12 facts. Is there any --

13 MS. TAYLOR: I'm sorry, I don't mean to interrupt, but  
14 I just want to make sure I understood what the doctor said  
15 before Ms. Freeze moves on.

16 THE COURT: Just a second. Is Mr. Berry going to be  
17 handling this witness or are you?

18 MS. TAYLOR: He's likely to do Mr. Krueger's cross,  
19 Your Honor.

20 THE COURT: Well, then I want him to be the person to  
21 speak on this witness.

22 MS. TAYLOR: Yes, Your Honor.

23 MR. BERRY: Your Honor, I think there was just sort of  
24 a note-taking issue. We wanted to make sure we understood him  
25 before we move forward.

Direct/Freeze - Dr. Krueger

1           THE COURT: Okay.

2           MR. BERRY: Which is that did the doctor say that the  
3 defendant would be a good candidate for treatment and that he  
4 could be managed in the community now, is what we were trying  
5 to make sure we understood.

6           THE WITNESS: Yes, I would say that's my opinion.

7           MR. BERRY: Thank you, Your Honor.

8           THE COURT: All right.

9 BY MS. FREESE:

10 Q. One of the things I -- and it didn't really come up in the  
11 context of the tests that you administered, but in your  
12 experience of evaluating sex offenders, what, if any,  
13 significance is there attached to whether a contact victim is  
14 known or is a stranger? Is there any significance there?

15 A. Yes. Let's say within the Static-99, there's a very  
16 thorough, detailed explanation of these definitions. A  
17 stranger is somebody that's -- in which sexual abuse has  
18 started to occur within 24 hours of somebody having met this  
19 particular individual, the victim.

20           So that a stranger victim, if somebody is identified  
21 as a stranger, would imply sort of predatory, typically  
22 predatory behavior, where somebody is out recruiting, is not --  
23 most sexual abuse victims will know, have had some prior  
24 contact or some knowledge of their victimizer, I think up to  
25 90 percent. But if there's a stranger victim, this would imply

Direct/Freeze - Dr. Krueger

1 both -- would imply increased risk of reoffense, basically.

2 Q. And was there anything that you reviewed in this case to  
3 indicate that there was any stranger contact victims?

4 A. There was not.

5 Q. Okay. So what, if any, you know, significance then does  
6 that have?

7 A. Well, again, I indicated in my report that this was  
8 essentially an incest crime, basically within the family, which  
9 is the lowest risk category. In reviewing the presentence  
10 memorandum, there was another -- I think a minor victim who was  
11 not related. This was known to the -- to Mr. Augusta, but not  
12 a stranger victim.

13 Overall, I think that his criminal behavior was  
14 opportunistic and related to his immediate environment and did  
15 not involve predatory behavior. And I think generally  
16 speaking, this would put him in a lower risk and easier to  
17 treat category.

18 Q. Dr. Krueger, my final questions are really just about the  
19 report that you prepared in this matter. Okay? After you  
20 evaluated Mr. Augusta, did you transcribe notes of your  
21 interview and your impressions?

22 A. I did, yes.

23 Q. And you provided them to me?

24 A. Yes.

25 Q. And did you also prepare a draft report in this matter?

1 A. I configured, you know, on my computer a report that I  
2 emailed to you. This was a draft. I think there was one  
3 change with an area code or some such thing as that. But there  
4 was no other draft report. This is the -- the report was  
5 basically the final report that I gave you.

6 Q. And at any time did I suggest any revisions that you make  
7 to the substantive portion of your report?

8 A. No, no suggestions at all.

9 MS. FREESE: Your Honor, I have no further questions  
10 for Dr. Krueger.

11 THE COURT: All right. Thank you.

12 EXAMINATION

13 BY THE COURT:

14 Q. Dr. Krueger, as you evaluated the risk of recidivism, did  
15 you factor in the disparate age of the defendant and the victim  
16 in this case?

17 A. Again, I'm aware of it in terms of age. The sort of age of  
18 a victim has not been, in various studies and so on, proven to  
19 be a risk, a risk category, a risk factor. I mean, it's  
20 obvious that this was his younger brother, there were infant  
21 victims and so on, but this does not sort out to be a  
22 particular risk factor.

23 Q. Okay. And what about the length of time over which the  
24 criminal conduct occurred or the repeated nature of the  
25 assaults?



1 A. Again, I'm aware of this. I think in terms of validated  
2 measures, neither the length of time, number of victims, number  
3 of assaults are associated with risk of recidivism. It's  
4 basically -- the main factor is the imposition of the legal  
5 sanction and the violation in spite of that.

6 Q. Okay. So the number of victims and the different types of  
7 criminal conduct would also not be factors?

8 A. Well, in terms of an absolute risk of reoffense, they would  
9 not be factors. In terms of -- past behavior is the best  
10 predictor of future behavior.

11 Q. Right.

12 A. If you were going to follow him, you would certainly be  
13 aware of this. But in terms of his actual risk of reoffense,  
14 it's not a demonstrated factor.

15 *THE COURT:* All right. Thank you. Counsel, I'd like  
16 to see counsel in chambers in 15 minutes. We'll look at the  
17 documents that the defense has disclosed, and then we can make  
18 a determination of whether we can resume now or after the lunch  
19 hour has passed. So I'll see you at 12:15.

20 *MS. FREESE:* Thank you, Your Honor.

21 *COURTROOM DEPUTY:* Court is in recess.

22 *(Luncheon recess taken.)*

23 *THE COURT:* Ms. Taylor, I see you at the podium, so  
24 that suggests to me that you're going to cross-examine  
25 Ms. Luck.

1           MS. TAYLOR: Yes, Your Honor. We did ask Ms. Freese  
2 if she would inquire of the witnesses in terms of their travel  
3 plans which one needed to leave first, and I believe Ms. Luck  
4 indicated --

5           THE COURT: Okay.

6           MS. TAYLOR: If we could take her first, if that would  
7 be okay with the court.

8           THE COURT: That's fine.

9           MS. TAYLOR: But, Your Honor, I believe Ms. Freese had  
10 a matter she wanted to put on the record briefly before we got  
11 started.

12          THE COURT: All right.

13          MS. FREESE: First I would note for the record that  
14 Dr. Krueger is leaving the courtroom. Thank you, Dr. Krueger.

15                Second, Your Honor, I just wanted to memorialize on  
16 the record the court's ruling and our discussion in chambers,  
17 that the government obviously moved on the record for  
18 disclosure of certain documents pursuant to Federal Rule of  
19 Criminal Procedure 26.2, that I objected to the disclosure of  
20 that document, those documents; however, the court conducted an  
21 in-camera review and granted the government's request with  
22 respect to three emails and two draft reports, one being of  
23 Ms. Luck, the other of Dr. Krueger.

24                In support of my objection, I took the position that  
25 the material at hand did not constitute a statement and invoked

1 the work product privilege. The court overruled that  
2 objection, and in accord with the court's order, I turned over  
3 the documents.

4 *THE COURT:* All right. Thank you.

5 *MS. FREESE:* Thank you, Your Honor.

6 *THE COURT:* Where is the witness? Okay.

7 *MS. TAYLOR:* Your Honor, we would just ask Ms. Luck to  
8 retake the stand.

9 *THE COURT:* Ms. Luck, you're still under oath.

10 *THE WITNESS:* Yes. Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Ms. Luck, on direct examination, you indicated that one of  
14 the most significant -- those were the terms you used, the  
15 "most significant" -- witnesses that you interviewed was Ruben  
16 Augusta. Do you recall that testimony?

17 A. Yes.

18 Q. Now, Mr. Augusta is the gentleman who, according to the DNA  
19 test, was excluded from being the father of the defendant?

20 A. That's correct.

21 Q. Now, Mr. Augusta, Mr. Ruben Augusta, he provided you no  
22 information about this defendant that occurred in the past,  
23 say, five years?

24 A. That's correct.

25 Q. And he provided you no information about this defendant

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1 that would have occurred over the past ten years?

2 A. That's correct.

3 Q. Yet it was your opinion that he was one of the most  
4 significant witnesses that you spoke with?

5 A. These were all significant witnesses that I spoke to.

6 Q. But your testimony was that he was one of the most  
7 significant?

8 A. They're all significant.

9 Q. Now, the DNA test that you had an opportunity to review,  
10 that did not establish who the defendant's father was?

11 A. That's correct.

12 Q. It simply says that Ruben Augusta was excluded?

13 A. That's correct.

14 Q. Yet your report indicates that Kenneth Hunter is the  
15 biological father of the defendant?

16 A. Yes, as far as we know.

17 Q. Now, that's simply based on speculation by witnesses that  
18 you spoke to. Right?

19 A. Yes.

20 Q. You didn't speak with Kenneth Hunter, did you?

21 A. No, I didn't.

22 Q. How about the defendant's grandmother, Sarah, you didn't  
23 speak with her, did you?

24 A. No. I didn't have that opportunity to.

25 Q. Now, you also didn't have the opportunity to speak with the

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1 defendant's mother, Kendra, who you mentioned an awful lot  
2 throughout your report. Right?

3 A. Yes.

4 Q. Because she's in a vegetative state?

5 A. Yes.

6 Q. And you mention in your report purportedly a reason why  
7 she's in that state?

8 A. Yes.

9 Q. Now, your report also indicates, in the first couple of  
10 pages, a number of documents that you reviewed. At my count,  
11 it was over 60 documents that you would have reviewed that were  
12 connected to this case?

13 A. Yes.

14 Q. Including the discovery in this case, in the co-defendants  
15 of the case?

16 A. What discovery was sent to me, yes, that's correct.

17 Q. In reviewing the discovery, do you recall reviewing the  
18 online chats of the defendant that discuss that he, in fact,  
19 put his mother in that vegetative state once she discovered  
20 that he had been raping his brother?

21 A. I don't recall that.

22 Q. Now, Ms. Freese asked you some questions about what she  
23 called the early teen years of the defendant. She defined that  
24 time period as when he was 11, 12, and 13 years old.

25 A. Yes.

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1 Q. Now, you indicated that the defendant, at around the age of  
2 12, reported to you that he entered online chat rooms with  
3 older men, and those chats were sexualized. Do you recall  
4 that?

5 A. Yes.

6 Q. You also indicated that these chats developed into physical  
7 sexual contact?

8 A. Yes.

9 Q. Did you have an opportunity to review Dr. Krueger's report  
10 or speak with him about his findings?

11 A. I did review Dr. Krueger's report.

12 Q. Then it must have surprised you that what the defendant  
13 self-reported to Dr. Krueger was different than what he  
14 self-reported to you as to that issue?

15 A. No.

16 Q. Well, you have the binder of the defendant's exhibits  
17 before you?

18 A. Yes.

19 Q. Dr. Krueger's report is contained in that binder, and it  
20 indicates that he did not have sexual contact with --

21 A. Can you refer me to the page, please?

22 Q. Sure. Dr. Krueger's report should be behind Tab 4, I  
23 believe. Do you see that?

24 A. And what page are we referring to?

25 Q. And it's Pages 4 and 5. But looking at Page 4 --

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1 A. Yes.

2 Q. -- do you see that he's discussing his sexual -- the  
3 defendant's self-report of sexual activities at the age of six?

4 A. I thought you were asking me about the chat rooms.

5 Q. That's on Page 5.

6 A. Yeah, on Page 5, it says at the age of 12, he would go to  
7 chat rooms and initially engaged in nonsexual chatting, which  
8 became quite compulsive, and then it grew into become sexual.

9 Q. Okay.

10 A. That's what I had said. That's what he had told me.

11 Q. And does it say that he engaged in sexual contact with an  
12 adult at the age of 12? If you look at the top of Page 5, the  
13 first full paragraph.

14 A. He said at age 13, he experimented sexually with a  
15 15-year-old boy. This is not about the chat rooms, though.

16 Q. In the middle of that paragraph, he said he had no other  
17 physical contacts until he was 18.

18 A. I don't think he's referring to the chat room there.

19 Q. Can you show me then where in Dr. Krueger's report he talks  
20 about having sexual contact with an adult connected to the chat  
21 rooms?

22 A. I have to go through the report and read it again. Okay.

23 Q. At the bottom of Page 4 is where he talks about his history  
24 of sexual development, and he talks about engaging with  
25 another -- at the age of six, he engages with another

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1 six-year-old in oral sex; at the age of 12, oral sex with a  
2 14-year-old.

3 A. Okay. And he did engage in sexual relations with other  
4 individuals at age -- that he met in the chat room.

5 Q. You're at the bottom of page --

6 A. No, I'm just telling you what my report has said, and  
7 that's what he had told me.

8 Q. I'm not on your report, I'm on Dr. Krueger's report.

9 A. Okay.

10 Q. Then at the age of 13, he experimented with a 15-year-old,  
11 mutual masturbation, at the age of 15.

12 A. I think you're better off discussing that with Dr. Krueger.

13 Q. I'm asking you if you were surprised to find out that his  
14 self-report to Dr. Krueger was different than his self-report  
15 to you.

16 A. No, I don't think it necessarily was. Maybe it just wasn't  
17 included in here, but that's what he reported to me. And I'm  
18 sure that's -- I'm quite confident that's what happened.

19 Q. Okay. But does it say in here that at the age of 12, he  
20 was having sex with adults? Because when I'm looking through  
21 his sexual history at the age of 12, I don't -- he talks about  
22 his sexual activities, and I'm not seeing that.

23 I see the paragraph where he talks about him chatting  
24 online, but he doesn't report it going further, as far as I can  
25 tell. Do you see anything else?



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1 A. I think you should address that with him, with Dr. Krueger.

2 Q. In the review of the materials that you did, you saw that  
3 the defendant has -- his self-reporting has been questioned  
4 before. Right?

5 A. In reference to what?

6 Q. To self-reporting to a doctor.

7 A. Specifically, what are you referring to?

8 Q. Take a look at Exhibit 9, please, in the binder. And I  
9 would direct you to page -- I believe if you look at -- there  
10 are a couple of page numbers in this document.

11 So if we look at the page numbers that go by -- where  
12 it says at the top left-hand corner, William Hunter, followed  
13 by the page number and then the date, which is August 12th of  
14 '08, you're looking for William Hunter, Page 5.

15 A. Okay.

16 Q. The heading of that paragraph says, Appearance, Demeanor,  
17 and Mental Status. Are you on that page?

18 A. Yes.

19 Q. The middle of that paragraph, there's a line that says, The  
20 veracity of his self-report was questionable.

21 A. I see where that particular person made that assessment.

22 Q. Did you have an opportunity to review this document that's  
23 tabbed as -- in the defendant's binder as Tab 9? Now, this is  
24 the Pennsylvania Counseling Services, Children's Services,  
25 psychological evaluation done of the defendant when he was age

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1 12 back on August 12th of 2008.

2 A. Yes.

3 Q. So you saw that the defendant's -- the veracity of his  
4 self-reporting was questioned, has been questioned by Dr. Brian  
5 Andrews, who is a licensed psychologist in Pennsylvania,  
6 before?

7 A. Yes. In many cases, what happens is, on these evaluations,  
8 they do not have access to all the information and the --

9 Q. Are you questioning this particular doctor's report? Did  
10 you have an opportunity to talk to him?

11 A. I'm just -- I wanted to share something, or should I just  
12 wait for Ms. Freese?

13 Q. I'm sure Ms. Freese will ask you some questions about it.

14 A. Okay, okay.

15 Q. You also testified about the defendant being the victim of  
16 bullying throughout his life. Right?

17 A. Yes.

18 Q. In fact, you said that at the age of 12, that he was kind  
19 to the people he met and that he was a good friend to people.  
20 Those were direct quotes that you made today on the stand.

21 A. In high school, when he started making friends, afterwards,  
22 he really tried to be a good friend to the people that he met.

23 Q. Well, today what you said on the stand was, at the age of  
24 12, he was kind to the people he met, and he was a good friend  
25 to people.

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1 A. From going into high school, he tried -- he started to make  
2 friends for the first time, and it was a very positive  
3 situation where he was very -- he tried to be very loving,  
4 considering that he was never shown anything close to love  
5 himself.

6 Q. Now, you don't have any personal knowledge of that. Right?

7 A. When your father calls you a faggot and your mother beats  
8 you up and your father beats you up, that would be a home  
9 that's not very loving.

10 Q. But you don't know that those things happened. Right? You  
11 have been told those things.

12 A. If you're a probation officer and you're doing an  
13 investigation, that's what you would put in your report as  
14 information. I have reached out to many other people, much  
15 more than in a probation investigation, so I'm quite satisfied  
16 with the material that was in this report, very much satisfied.

17 Q. You were just questioning the report of another licensed  
18 psychologist.

19 A. Because he didn't have the opportunity to have all the  
20 information that I had and interview the same parties that I  
21 interviewed and had as much information.

22 Q. Do you know what Dr. Brian Andrews would have had before  
23 him in 2008?

24 A. I don't think he would have had the whole history. And we  
25 were very intent on obtaining as many records as we could.

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1 Q. Isn't it true that the defendant has actually been the  
2 bully, not the victim, in the incidents that have been  
3 documented?

4 MS. FREESE: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: It's not uncommon for someone that's  
7 bullied to eventually be the bully. In fact, that's one of the  
8 reasons that these bullying situations occur.

9 BY MS. TAYLOR:

10 Q. Ma'am, I'm not asking you to generalize. I'm asking you  
11 specifically.

12 A. But I'm answering in a factual way, as well. Yes, there  
13 were situations that he bullied, but I guess there was a  
14 certain period of time that he had enough of being the victim,  
15 and they do stand up eventually. That's very common in  
16 bullying situations.

17 Q. You didn't include that, though, in your report, did you?

18 A. No, it's not there.

19 Q. In the same report that we were just looking at behind Tab  
20 9, that counseling report when the defendant was 12, the  
21 psychological evaluation, if you could take a look at that on  
22 Page 2. Again, I'm going on the page numbers at the top in the  
23 left-hand corner.

24 Now, this is, again, when the defendant is only 12,  
25 not when he's in high school, but when he's only 12, this

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1 psychological evaluation describes an incident on Page 2 in the  
2 middle paragraph that's captioned, Relevant Information,  
3 Concerns.

4 That middle paragraph describes an incident at a  
5 swimming pool at the YMCA in the summer of 2008, and it says  
6 the defendant became enraged. That's the word that this doctor  
7 used.

8 A. Okay.

9 Q. Do you see where I am?

10 A. I see that paragraph.

11 Q. The sentence says, starts, For example, while attending  
12 camp during the summer of 2008, William became enraged with a  
13 female peer.

14 A. In the swimming pool at the YMCA who was teasing him.

15 Q. Right, that's the end of the sentence. And then it  
16 continues, He grappled with her and pulled her down under  
17 water, and had staff not intervened and jumped into the pool  
18 and dragged him off of her, William may well have drowned or  
19 seriously injured this peer.

20 A. We were dealing --

21 Q. I'm just asking, do you see that information in this?

22 A. Yes. And you see there was a teasing incident, and we have  
23 a child that was so severely damaged, that by the time he was  
24 eight years old, he made a suicide attempt and ends up in a  
25 psychiatric hospital at --

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1 Q. Ma'am, you see this doctor saying that he was teased at a  
2 swimming pool and he almost drowned a child when he was 12? Do  
3 you see that's what it says?

4 A. Yes. He was a very traumatized child.

5 Q. And then the next paragraph, do you see what it says?

6 A. He was a victim of much abuse and bullying.

7 Q. Do you see the next paragraph?

8 A. Yes. Go ahead.

9 Q. It starts, During his sixth-grade year. That's the  
10 following paragraph.

11 A. Yes.

12 Q. It indicates, the following sentence, He is large for his  
13 size and tends to bully and dominate his peers. He often does  
14 not know how to interact with them otherwise and tends to  
15 engage with children who are much younger than he is because  
16 they are much easier for him to dominate and control. Do you  
17 see that indication there?

18 A. Yes. And also --

19 Q. That information is not in your report, is it?

20 A. No, but there are also situations where children are  
21 bullied, they tend to seek out younger children because they're  
22 not as tormented by the younger children.

23 Q. Younger children like his younger brother?

24 A. I'm not saying that. I'm just saying in situations of  
25 bullying. And I'm sure you've probably read about that, as

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1 well.

2 Q. You mentioned the Pennsylvania Counseling report that we're  
3 referencing here in your report.

4 A. Yes.

5 Q. But none of this information that I'm asking you about here  
6 today, none of this is referenced in your report?

7 A. The report is quite lengthy, and there was a lot of  
8 material to go through. I didn't have to go through this whole  
9 report. We already have it.

10 Q. But you specifically mention this report, and you  
11 specifically talk about bullying in your report.

12 A. And he was tremendously bullied and isolated. And there  
13 were situations where he just was content just to sit by  
14 himself in the back of the classroom as to not be bullied and  
15 bothered.

16 Q. But you think your report is accurate to only paint him as  
17 a victim of bullying and not to bring out the fact that he was  
18 a bully at points in time?

19 A. I think the report is very accurate speaking about the  
20 trauma this young man had gone through, which was incredibly  
21 mind-boggling what he had suffered.

22 Q. Who wrote your report?

23 A. Who wrote my report?

24 Q. Yes, ma'am.

25 A. What's that supposed to mean?

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1 Q. I'm sorry, the question wasn't clear?

2 A. Who wrote my report?

3 Q. Who wrote your report?

4 A. I wrote my report.

5 Q. The final version that we have was not the only version.  
6 Right?

7 A. Yes, there was editing to my report. Yes.

8 Q. There's a version dated July 12th, 2017. Right?

9 A. A version? You mean an edit?

10 Q. There's a version of your report that's not the final  
11 version that we received that's dated --

12 A. Yes, the report was edited grammatically and to make it  
13 read more smoothly.

14 Q. And this first version dated July 12th, 2017, is it your  
15 testimony that you yourself drafted this first version?

16 A. Yes. It's not a version, it's the same report. It was  
17 just edited and made a little bit more readable.

18 Q. Now, the Public Defender's Office asked you to edit certain  
19 things that were in it, though. Correct?

20 A. To make it more readable. They wanted a more flowing  
21 report instead of just facts after facts.

22 Q. Well, the July 12th version starts off with the defendant's  
23 name. Right?

24 A. And we just tried to put the -- we were just explaining,  
25 trying to make it easier to understand who the people were



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1 within the report.

2 Q. And the final version that was provided to the government  
3 that's dated October 12th, the defendant's name is not at the  
4 beginning of the report?

5 A. Yes, that's correct.

6 Q. Now the beginning of the report starts off talking about  
7 how Kenneth Hunter is a criminal?

8 A. Yes.

9 Q. As though the focus of the report is now not the defendant?

10 A. No, the focus of the report is not Kenny Hunter. It's  
11 talking about -- it's a family history, it's a social history,  
12 and we started -- rather than mentioning him first, we  
13 mentioned his father first.

14 Q. Mr. Hunter, that's the person who a number of people  
15 speculate is the defendant's father?

16 A. Yes.

17 Q. And that's also a witness that you didn't speak to?

18 A. Well, we wanted to speak to him. He didn't want to be  
19 interviewed.

20 Q. And his grandmother who he lived with for most of his life,  
21 another witness that you didn't speak to?

22 A. No, we wanted to interview her, as well, and would not be  
23 interviewed.

24 Q. What about his mother's caregivers, did you have an  
25 opportunity to speak with them?

Cross/Taylor - Luck

1 A. No, I did not.

2 Q. So all the information about the medical condition of the  
3 defendant's mother came from the defendant and other  
4 witnesses --

5 A. Yes.

6 Q. -- who are speculating on what her medical condition is?

7 A. No, his aunt actually went to see her, his paternal aunt.

8 Q. She went to see her and then --

9 A. Said she was in a -- that she was in a very bad vegetative  
10 state. She couldn't speak to her. She didn't initially know  
11 how damaged she was until she saw her in person.

12 Q. But how she ended up in that state --

13 A. She visited her while she was --

14 Q. -- that information was speculation given to you?

15 A. That was information that William had given me.

16 Q. His self-reporting?

17 A. Yes. I don't have a release signed by her because she  
18 wasn't in the state to sign a release to get her medical  
19 reports.

20 Q. And no attempts were made to have any release signed?

21 A. She's in a vegetative state. It couldn't be signed.

22 Q. By other family members or the court?

23 A. We didn't have a court order to get her medical records.

24 Q. And no attempts were made to get a court order, was my  
25 question?

1 A. No, there were no attempts made to get a court order to get  
2 her medical records. We know she's in a vegetative state.

3 Q. My question is about how she got in that vegetative state.  
4 Your information about that is simply speculative from  
5 witnesses or from the defendant?

6 A. From witnesses and the defendant.

7 MS. TAYLOR: That's all I have, Your Honor.

8 THE COURT: Ms. Freese.

9 MS. FREESE: Thank you, Your Honor, just briefly.

10 REDIRECT EXAMINATION

11 BY MS. FREESE:

12 Q. Ms. Luck, you were asked on cross some questions about your  
13 investigation regarding my client's father.

14 A. Yes.

15 Q. Biological father. And I think this is pretty clear,  
16 that -- am I correct that the paternity tests that you reviewed  
17 and provided that are in the binders excluded Ruben Augusta as  
18 the biological father? Is that right?

19 A. That's correct.

20 Q. Did you review school records in this matter?

21 A. Yes, I did.

22 Q. And what name were the school records under?

23 A. His father was named as Kenny Hunter.

24 Q. And did the last name on the school records reflect Hunter?

25 A. It did.

Redirect/Freese - Luck

1 Q. And did the mother's name in the school records reflect  
2 Hunter?

3 A. Yes, they did.

4 Q. Did you interview any other witnesses that told you that  
5 Kenneth Hunter was his biological father?

6 A. Yes.

7 Q. And did one witness tell you that he looked just like him?

8 A. Yes.

9 Q. Based upon your investigation, did you receive any  
10 information indicating that someone other than Mr. Augusta or  
11 Mr. Hunter were the biological father?

12 A. Never.

13 Q. You were also asked some questions about -- and I don't  
14 know if you're there in your binder, Tab 19, that you reviewed  
15 the Pennsylvania Counseling Services records. I'll give you a  
16 minute to get that.

17 A. Okay. Tab 19 is Carlisle High School.

18 Q. I'm sorry, my apologies. It's Number 9. I'm sorry.

19 A. Yes. I'm there.

20 Q. Okay. Thank you. So under "residence" on the first page  
21 of those reports, under "other child services" -- do you see  
22 where I am that's underlined on the first page?

23 A. Yes.

24 Q. Is there any indication here whether or not this was at or  
25 about the time that Children and Youth Services had an open

Redirect/Freese - Luck

1 file in this matter?

2 A. Yes.

3 Q. And in 2008, am I correct that based on his date of birth  
4 listed here, that he'd be approximately 12 years old? Is that  
5 right?

6 A. That's correct.

7 Q. In fact, that's actually stated in the records?

8 A. Um-hum.

9 Q. So to the extent that there's any self-report there, was  
10 this prior to his involvement in any sexualized chat rooms?

11 A. It was.

12 Q. Okay. And if you turn, you were asked some specific  
13 questions about -- and, again, I think Ms. Taylor directed you  
14 to Page 6 -- my apologies, something else underlined, Page 7  
15 (sic) of those where there was a statement she asked you about  
16 where the doctor said the veracity of his self-report was  
17 questionable.

18 A. Yes.

19 Q. At that point did it appear that he was being asked  
20 anything at all about his sexual development or anything?

21 A. No.

22 Q. Now, you were asked a number of questions -- well, first  
23 about some attempted interviews, and you sort of got to this, I  
24 think, at the end of your cross. Did you attempt to locate and  
25 interview Kenneth Hunter?

Redirect/Freese - Luck

1 A. Yes, I did. I spoke to his sister, and the sister was  
2 asked -- I asked her if she could reach out to him on our  
3 behalf and have him speak to us. And we got back to her, and  
4 she said, no, he was not interested in speaking to us.

5 Q. Okay. So you did attempt it?

6 A. Yes.

7 Q. And I'd like to talk to you, as well, about William's  
8 grandmother.

9 A. Yes.

10 Q. Was she a person of interest that you would have liked to  
11 interview?

12 A. Yes, very much so.

13 Q. Okay. What, if any, attempts did you make, Ms. Luck, to  
14 try to interview her?

15 A. We had attempted to reach out to her and had no luck in  
16 having her call us back to speak with us.

17 Q. So, again, you wanted to interview her. Right?

18 A. Yes, very much so.

19 Q. Now, you were asked a number of questions about  
20 Dr. Krueger's report. Do you happen to have it up there, Page  
21 4? Or, excuse me, Exhibit 4.

22 A. I'll get it. Yes.

23 Q. Okay. Specifically, I'm going to direct your attention to  
24 Page 5.

25 A. Yes.

Redirect/Freese - Luck

1 Q. Now, on cross-examination, do you recall Ms. Taylor asking  
2 you a number of questions with respect to purported  
3 inconsistencies? Do you recall that?

4 A. Yes, I do.

5 Q. And one of the concerns -- most of those questions were  
6 directed towards his self-report of sexual interactions with  
7 older men when he was a minor?

8 A. Yes.

9 Q. Is that correct?

10 A. That's correct.

11 Q. I'm going to ask you to take a look at a second full  
12 paragraph, which starts with, Mr. Augusta, comma, when asked  
13 further. Do you see that?

14 A. Yes.

15 Q. I'm going to ask you to read the first seven lines of  
16 Dr. Krueger's report.

17 A. Okay. (Reading:) Mr. Augusta, when asked further about  
18 his sexual behavior, said at the age of 12 or 13, he would go  
19 into chat rooms. He said that initially he was engaged in  
20 nonsexual chatting, which at times became compulsive. He said  
21 that this chatting grew to include not one, but several  
22 individuals who would participate and that it became sexual.

23 He said he would engage in role-play in which he would  
24 adopt the role of a victim and have others abuse him. He did  
25 this for about a year or two, he said. And then when he was 14

1 or so, members of the audience would ask him if he had a  
2 younger brother or sister, and he would engage in sexualized  
3 conversations involving himself.

4 Q. Okay. Is there anything about that information in  
5 Dr. Krueger's report that's inconsistent with what he told you?

6 A. No.

7 MS. FREESE: Your Honor, I have no further questions  
8 for Ms. Luck.

9 THE COURT: All right. Thank you. Does that conclude  
10 the testimony of this witness?

11 MS. TAYLOR: I just have one brief question.

12 THE COURT: Okay. Go ahead.

13 RECROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Ma'am, you don't think there's an inconsistency between  
16 physical sexual contact and role-play that's online?

17 A. He had physical contact, as well, if that's what you're  
18 asking me, yes.

19 Q. I'm not understanding your answer.

20 A. Is there a difference? There's a difference, yes, but he  
21 had sexual contact, as well.

22 Q. In Dr. Krueger's report or in your report are you referring  
23 to?

24 A. In both.

25 MS. TAYLOR: I think that makes it clear, Your Honor.



1 Thank you.

2 *THE COURT:* Thank you.

3 *THE WITNESS:* Thank you, Your Honor. Am I excused?

4 *MS. FREESE:* I have no additional questions.

5 *THE COURT:* Yes.

6 *THE WITNESS:* Thank you.

7 *MR. BERRY:* Your Honor, Dr. Krueger is on the stand.

8 May I proceed?

9 *THE COURT:* You may.

10 *MR. BERRY:* Thank you.

11 CROSS-EXAMINATION

12 BY MR. BERRY:

13 Q. Good afternoon, Dr. Krueger. How are you today?

14 A. Fine. Thanks.

15 Q. Great. Now, in the report that you generated, the 16-page  
16 report that we talked about here today, your  
17 opinion/recommendation section at the very end, Page 16, you  
18 have a few opinions and recommendations that you make in there.

19 One of them is that Mr. Augusta's ACE score is the  
20 worst that you've seen in your career, and you testified you've  
21 now had one slightly worse than that. Correct?

22 A. Yes.

23 Q. You also put in there that you see his risk of recidivism  
24 ranges from moderate high to moderate to low, depending on the  
25 diagnostic tool. Correct?

Cross/Berry - Dr. Krueger

1 A. Yes, or the circumstances of release.

2 Q. Okay. You also put in that section that Augusta is an  
3 excellent candidate for sex offender-specific therapy.

4 Correct?

5 A. Yes.

6 Q. You also say that his prognosis for treatment is, quote,  
7 good. Correct?

8 A. Yes.

9 Q. You say that Augusta is at a significant risk of being  
10 sexually abused in prison. That's one of your final  
11 recommendations or opinions. Correct?

12 A. Yes.

13 Q. And that you believe that he could be safely managed in the  
14 community. Correct?

15 A. Yes.

16 Q. Are there any other sort of major salient opinions or  
17 recommendations that you want to add to that section here today  
18 before we move forward?

19 A. No.

20 Q. Okay. Now, your opinion and recommendations, what I call  
21 the output, comes from a set of inputs. Fair to say?

22 A. Yes.

23 Q. All right. And those inputs, for simple purposes of my  
24 country lawyer, West Texas brain, I break it into three  
25 categories. And one of them is pretty important and Ms. Freese

Cross/Berry - Dr. Krueger

1 mentions it to you and she says it's the interview you did of  
2 Augusta for five hours on June 22nd, 2017. That's one pretty  
3 specific input. Correct?

4 A. Yes.

5 Q. And then you also review a number of documentary items,  
6 pieces of information from the case file, discovery materials,  
7 medical records, Ms. Luck's report. Those are all sort of one  
8 category of inputs. Is that fair to say?

9 A. Yes.

10 Q. And then sort of your third basis for your opinion,  
11 interview, documentary exhibits or information, and then the  
12 diagnostic tools that you applied to Mr. Augusta's case.  
13 Correct?

14 A. Yes.

15 Q. Now, on those diagnostic tools or psychiatric testing,  
16 Tests 1 to 10 test the -- test to assess the deviant and  
17 nondeviant sexual behavior. Right? That's one through ten?

18 A. Yes.

19 Q. And then even 11 to 15 test to screen for other psychiatric  
20 symptoms. Correct?

21 A. Yes.

22 Q. And then 16 is sort of on its own, and it's the Hare  
23 psychopathy test that you sometimes refer to as the PCL-R,  
24 Psychopathy Checklist-Revised. Correct?

25 A. Yes.

Cross/Berry - Dr. Krueger

1 Q. And then 17 to 20 are the actual risk assessment  
2 instruments that you applied. Is that correct?

3 A. Yes, in addition to the Hare, which many would consider  
4 important for risk assessment.

5 Q. Okay. So we'll lump the Hare into the risk assessment,  
6 even though it's kind of set off by itself.

7 A. You could do that, sure.

8 Q. Okay. And that's sort of the way your report reads to me,  
9 as well, just have it broken up differently in the report, so I  
10 want to make sure I'm clear on your view of it.

11 Now, you agree, don't you, that some of the  
12 information you rely upon is subjective and some of it is more  
13 objective? Do you agree with that?

14 A. Yes.

15 Q. Give me an example of some of the objective information  
16 that you relied upon.

17 A. I think basically all the historical information and  
18 documentation, which is listed in my list of sources of  
19 information. You know, this would include descriptions of  
20 the -- as well as the -- well, descriptions of the abuse.

21 Q. Which abuse?

22 A. Of the abuse of his -- of the Victim 1, basically.

23 Q. The abuse he caused?

24 A. That's correct, that's what I mean.

25 Q. Go ahead.

Cross/Berry - Dr. Krueger

1 A. That would be one objective. The second objective source  
2 of information would be my observations of him, not his  
3 self-report, but what I see before me.

4 Q. Okay.

5 A. I think the third set of information of an objective nature  
6 would be these various risk assessment instruments. For  
7 instance, the Static-99R, one can score not only in the absence  
8 of any history from him, you could -- and this is done, you  
9 know, for a thousand individuals a year based on records by the  
10 New York State Office of Mental Health for screening for  
11 individuals who are released into the community. So there are  
12 sort of demographic factors which are not reported by this  
13 individual and objective.

14 Q. So you consider the Static-99 one of the more objective of  
15 the instruments that you utilized?

16 A. Yeah, sure.

17 Q. Fair to say?

18 A. Yes, as well as the other risk assessment instruments. The  
19 Hare relies on both observation and interview. The SVR is a  
20 rating scale which relies upon documentation. The SONAR, the  
21 Level of Service/Case Management Inventory are also instruments  
22 which rely upon demographic information in addition to some  
23 subjective information.

24 Q. Okay. So you agree that some of those instruments contain  
25 some subjective information in them?

Cross/Berry - Dr. Krueger

1 A. Sure.

2 Q. What would you consider to be sort of the most  
3 subjective -- we just talked about the objective, let's talk  
4 about the subjective inputs that you received in making your  
5 assessment. What would you say was the most subjective  
6 information that helped you form part of your opinion?

7 A. His description of what arouses him sexually.

8 Q. Okay. Anything else?

9 A. His narration of his history, his narration of his crimes,  
10 his responses to me as I went through a very -- a psychiatric  
11 history. I mean, all these were based upon -- were based in  
12 part upon his self-report.

13 Q. So the self-report tends to be rather subjective by  
14 definition?

15 A. Of course, yes.

16 Q. Right. Of the diagnostic tools that you utilized -- you  
17 rattled them off, the Static-99, the SVR-20, the SONAR, the  
18 Hare psychopathy test, do you -- would you rate those on a  
19 scale of subjective to objective, or do you think they're all  
20 equally objective?

21 A. I think that probably some are more objective than others.  
22 I think the Static --

23 Q. Educate us.

24 A. Well, I think the Static-99R relies upon demographic  
25 factors which are fixed and really immutable. I think that the

Cross/Berry - Dr. Krueger

1 Level of Service/Case Management Inventory relies upon  
2 subjective responses but also a review of records. But I think  
3 that that's an instrument which is largely based on objective  
4 information. I think the --

5 Q. All right. So let's go to the bottom of your list then.  
6 We got your top two.

7 A. Okay.

8 Q. Give me your bottom two, most objective.

9 A. The bottom two I would say would be the SONAR and the -- I  
10 would say the SONAR and the SVR-20.

11 Q. All right. Thank you. Let's talk about the Hare, PCL-R.  
12 I'm going to call it the PCL-R just because I don't want it to  
13 be spelled h-a-i-r in the transcript all day.

14 You agree that the PCL-R contains a lot of room for  
15 subjectivity on the part of the rater in this case. Don't you  
16 agree?

17 A. Sure.

18 Q. In fact, it's been criticized in the literature as  
19 containing items that are, quote, hardly measurable and too  
20 speculative and suggestive, end quote.

21 A. I don't know that particular statement. I would -- I think  
22 that one could certainly make that statement about the Hare.

23 Q. Not completely unreasonable to make that assessment, would  
24 it?

25 A. Yes.

Cross/Berry - Dr. Krueger

1           MR. BERRY: May I approach the witness, Your Honor?

2           THE COURT: Yes.

3           MR. BERRY: And I have this for Your Honor, as well.

4 BY MR. BERRY:

5 Q. Do you see what I've handed you, Dr. Krueger?

6 A. Yes.

7 Q. What is it?

8 A. It's my scoring sheet for the Hare.

9 Q. And that's actually the one you did, correct, not just a  
10 blank?

11 A. Yes.

12           MR. BERRY: At this time, Your Honor, the United  
13 States moves for the admission of Government's Exhibit 1.

14           MS. FREESE: No objection.

15           THE COURT: One is admitted.

16           MR. BERRY: May I publish, Your Honor?

17           THE COURT: Yes.

18 BY MR. BERRY:

19 Q. So let's zoom in on -- so just to be clear, Dr. Krueger,  
20 this PCL-R has 20 criteria. Correct?

21 A. Yes.

22 Q. They're basically contained on this sheet?

23 A. Yes.

24 Q. And it has them out to the side numbered one down to  
25 twenty, and then you can rate them as a no, which gives a zero.



Cross/Berry - Dr. Krueger

1 Correct?

2 A. Yes.

3 Q. A maybe gets a one?

4 A. Yes.

5 Q. A yes gets a two, and then you could select an omit, you  
6 just didn't want to consider that one for whatever reason?

7 A. Yes.

8 Q. Okay. Now, we don't have to worry about the omit column  
9 because you didn't do that on any of these. Correct?

10 A. I did not do it, yes.

11 Q. Everything gets something, a yes, a no, or a maybe. Right?

12 A. Correct.

13 Q. So in terms of the items, you agree that you can't really  
14 measure glibness and superficial charm in an objective and  
15 reliable way. Isn't that correct?

16 A. Well, I would say these are very -- these are vague and  
17 somewhat difficult to categorize notions. However, there's a  
18 manual which sets forth in a couple of paragraphs a description  
19 of this item.

20 MR. BERRY: Objection. Nonresponsive, Your Honor.

21 BY MR. BERRY:

22 Q. The question was, can you measure these in an objective and  
23 reliable way?

24 A. I would say yes, you can.

25 Q. Really? What's the tool to do that?

Cross/Berry - Dr. Krueger

1 A. The tool are individuals who are trained in the use of the  
2 Hare psychopathy checklist, who know well the criteria, who've,  
3 you know, had one or two levels of training, and who then  
4 interview somebody and who make a determination.

5 I mean, the Hare has been validated. There are easily  
6 a thousand peer-reviewed studies in many cultures, many  
7 countries, that support the validity of the Hare. So this is  
8 not objective like one could actually see something, but there  
9 is -- one can train observers to make judgments, and these  
10 judgments with these trained observers can have a great degree  
11 of consistency.

12 Q. A great degree of consistency, what we refer to as  
13 interrater reliability. Correct?

14 A. Yes.

15 Q. So two raters could look at this and arguably come up with  
16 different conclusions. Correct?

17 A. Yes.

18 Q. So doesn't that make it more subjective than objective?

19 A. Again, I would say that this is, within the literature, a  
20 test which is highly validated, which relies upon objective  
21 information. In fact, this test can be administered in the  
22 absence of any kind of interview. So somebody could sit down  
23 with a record, go through and rate a Hare if one is properly  
24 trained on the basis of a review and judgments about the  
25 particular behaviors that are described.

Cross/Berry - Dr. Krueger

1 Q. But to be clear, the instrument measuring whether it's yes,  
2 no, or maybe on the glibness or superficial charm, the  
3 instrument is a person, in this case you. Correct?

4 A. The instrument is a trained individual who is using a --

5 MR. BERRY: Objection. Nonresponsive.

6 BY MR. BERRY:

7 Q. Is it you or not?

8 A. If I administer the Hare, sure, it's me.

9 Q. You're the instrument. Correct?

10 A. No, the instrument is what's before us. It's a description  
11 of the Hare psychopathy checklist and --

12 Q. The question, Dr. Krueger, was, can you measure glibness  
13 and superficial charm with some instrument, and your answer is,  
14 yes, a trained rater can do that. Correct?

15 A. Yes, sure.

16 Q. What about superficial? Like, what is -- how do you  
17 measure whether the charm is superficial enough to be  
18 pathological? Can we see that somehow?

19 A. Again, you would have to look at the paragraph, descriptive  
20 paragraphs. I don't have the manual before me, but you would  
21 read this paragraph carefully, you'd be trained on it again and  
22 again and again, and there's agreement that you can establish  
23 if this is present or not.

24 Q. And it's the interpretation of that manual, of what is  
25 considered superficial enough that you interpret and then apply

Cross/Berry - Dr. Krueger

1 and decide yes, no, or maybe. Correct?

2 A. I would say not -- well, it's the reading of the manual,  
3 yes, sure.

4 Q. Right. What about shallow affect? You can't measure the  
5 difference between shallow and real, either, can you?

6 A. Again, using this methodology, you can, in my view.  
7 There's a description of the item contained and training of it,  
8 and you can get agreement among individuals who apply this.

9 And this is broadly accepted with huge -- it's probably the  
10 most validated of instruments available for predicting risk.

11 Q. Oh, that's interesting, because didn't you say that the  
12 Static-99 is the most validated?

13 A. The Hare is validated across a broad -- for all crimes,  
14 basically. The Static-99 is more for sexual crimes.

15 Q. What about callousness and lack of empathy, can you measure  
16 that with an instrument of some kind? Is there a device that  
17 you can say, ah, he's empathetic and he is not?

18 A. Again, using this methodology, you can, I believe.

19 Q. Again, it's the person making the decision. Right?

20 A. It's the trained professional using this manual who is  
21 making a decision.

22 Q. Unlike, for example, the Static-99, which you rate as the  
23 highest objective one where it just simply looks at things like  
24 was he convicted. Right? That's a yes/no, binary question.

25 Correct? That's pretty objective. You agree with that?

Cross/Berry - Dr. Krueger

1 A. These are clear or binary questions, yes, but --

2 Q. Whereas measuring someone's empathy, a little fuzzier. Do  
3 you agree with that?

4 A. Yeah, sure.

5 Q. The same with lack of -- let me scroll down. Pardon me.  
6 Lack of realistic long-term goals. When I was nine, I wanted  
7 to be a baseball player. Was that unrealistic?

8 A. For a nine-year-old, perhaps. I think that, again, there  
9 are full-item descriptions as to how you arrive at this. I  
10 don't have the manual, but they're very clearly described and  
11 allow individuals to use this. And over the 30 years that the  
12 Hare has been developed, there's vast literature that supports  
13 its validity.

14 Q. But, again, it's going to be up to the rater, in this case  
15 you, to determine whether his goals are realistic or not. Yes  
16 or no?

17 A. Yes, the rater using his training --

18 Q. I understand. Obviously your experience and your training  
19 come into it. I get it. But ultimately it's the rater's  
20 decision. Yes?

21 A. Yes, sure.

22 MR. BERRY: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MR. BERRY:

25 Q. Do you see what I've just handed you?

Cross/Berry - Dr. Krueger

1 A. Yes.

2 Q. What is it?

3 A. It's the SVR-20 coding sheet that I completed.

4 Q. Thank you.

5 MR. BERRY: At this time, Your Honor, the United  
6 States moves for the admission of Government's Exhibit 2.

7 THE COURT: Any objection?

8 MS. FREESE: No, Your Honor.

9 THE COURT: Two is admitted.

10 MR. BERRY: May I publish?

11 THE COURT: Yes.

12 MR. BERRY: Sorry, jumped the gun on that one.

13 BY MR. BERRY:

14 Q. Now, Dr. Krueger, when we look at this one, just for ease  
15 of reference for everyone else who is not quite as familiar  
16 with your handwriting as yourself or even me at this point, is  
17 it safe to say if it's circled, it's a yes, and if it's not  
18 circled, it's a no?

19 A. Yeah, sure.

20 Q. Because sometimes the Y's and the N's are hard for me, but  
21 that's sort of the way you solidify your Y, right, is with a  
22 circle?

23 A. Sure.

24 Q. Okay.

25 A. Exactly.

Cross/Berry - Dr. Krueger

1 Q. I think it's just helpful for everyone reading along. So  
2 number three on this psychological -- or psychosocial  
3 adjustment coding sheet here where it says "psychopathy,"  
4 that's basically you importing the Hare into this one and  
5 saying, no, he doesn't make that finding. Correct?

6 A. Yes.

7 Q. Now, Question Number 2, is a victim of child abuse. You  
8 have that in there. Right?

9 A. Yes.

10 Q. Now, is that -- that comes from his self-report. Correct?

11 A. Yes.

12 Q. Which you said previously was some of the more subjective  
13 information you received. Correct?

14 A. Yes.

15 Q. Number 12 -- and some of this I'm just freewheeling here  
16 because I don't really know what some of this means -- what is  
17 high-density offense? Explain that to me.

18 A. These would be a lot of offenses within a very specific  
19 period of time. Like, somebody might go on a binge of sort of  
20 sexual offending and, you know, engage in rape of many women  
21 over a period of time.

22 Q. And get caught and keep doing it, or does it matter whether  
23 they were convicted?

24 A. It doesn't matter. It's just a description of the  
25 frequency of events, frequency over time.

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1 Q. And you marked him as a no?

2 A. Yes.

3 Q. Are you sticking with that?

4 A. I would, yes.

5 Q. Number 19, lacks realistic plans. That's kind of similar  
6 to the PCL-R question about long-term goals. Right?

7 A. Well, I mean, what realistic plan can he have? He's going  
8 to be in jail for 30 years or 45 years. His plans are made out  
9 for him, so --

10 MR. BERRY: Objection. Nonresponsive.

11 MS. FREESE: Your Honor, I object. I think he did  
12 respond to the question.

13 BY MR. BERRY:

14 Q. Is this similar to the question in the Hare, the PCL-R,  
15 that talks about long-term goals, realistic or nonrealistic?  
16 Is it similar?

17 A. Similar, sure.

18 Q. Okay. You marked him the same between those two,  
19 basically. Right? He doesn't have unrealistic ones. Right?

20 A. Correct.

21 Q. And then Number 20, negative attitude toward intervention,  
22 that also you would consider is a subjective input. Correct?

23 A. Yes, it would rely upon an interview of him and his  
24 response.

25 Q. Right.



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1           MR. BERRY: Your Honor, the monitors are not on in the  
2 gallery. Do we want to turn them on for people in the gallery?

3           THE COURT: Sure.

4           MR. BERRY: May I approach?

5           THE COURT: Yes.

6           THE WITNESS: Thank you.

7 BY MR. BERRY:

8 Q. Sure. I've just handed you what's been marked as  
9 Government's Exhibit 3. Do you see that?

10 A. Yes.

11 Q. What is it?

12 A. It's the scoring sheet for the SONAR, S-O-N-A-R, which I  
13 scored.

14           MR. BERRY: At this time, Your Honor, the United  
15 States moves for the admission of Government's Exhibit 3.

16           THE COURT: Any objection to three?

17           MS. FREESE: No, Your Honor.

18           THE COURT: Three is admitted.

19 BY MR. BERRY:

20 Q. And just to be clear, Dr. Krueger, this is the one -- one  
21 of the two that you've put at the bottom of your list in terms  
22 of objective to subjective, meaning the bottom being the  
23 most -- one of the more subjective ones that you applied.  
24 Correct?

25 A. Yes.

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1 Q. Now, on Page 2 of this particular exhibit, you've got your  
2 scoring criteria there where you marked the six, basically, and  
3 then out to the side, is that your handwriting that --

4 A. Yes, yes.

5 Q. The next page, if you look on your screen -- I don't know  
6 that it's highlighted. On the screen, you'll see some  
7 highlighting in the version that's on that screen there. Do  
8 you see that?

9 A. Yeah.

10 Q. It's talking about intimacy deficits, which is one of the  
11 scoring criteria. Correct?

12 A. Yes.

13 Q. And in the explanation that you're provided here as the  
14 person being the rater, it sort of educates you a little bit  
15 and says, The degree of trouble should be sufficient to be of  
16 concern to the man or his partner. You agree that's a pretty  
17 subjective assessment, don't you?

18 A. Yes.

19 Q. One of the other criteria is the social influence, and it  
20 asks you whether a person is -- the number of people in his  
21 life that are not paid to be in his life. So, for example,  
22 Ms. Freese, unfortunately, doesn't count here, right, because  
23 she's paid to be in his life?

24 A. Sure.

25 Q. You don't count. You're paid to be in his life. Correct?

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1 A. Sure.

2 Q. And so it talks about positive or negative influences. You  
3 can't objectively measure positive or negative influences on a  
4 person. Right? It's a subjective assessment. Do you agree  
5 with that?

6 A. Yes.

7 Q. And then the attitude section, which you scored him with a  
8 zero, meaning he doesn't have any agreement with these  
9 particular attitudes, it's broken down into rape and child  
10 molestation. Correct?

11 A. Yes.

12 Q. And it's based entirely on his answers to questions about  
13 his attitudes towards rape and asks a series of questions and  
14 attitudes towards child molestation and asks a series of  
15 questions. Correct?

16 A. Yes.

17 Q. Entirely subjective on his part. Correct?

18 A. Yes.

19 Q. Now, you say that the Static-99 is what you consider to be  
20 one of the more objective ones. Correct?

21 A. Yes.

22 Q. You know that the manual says some scoring decisions do  
23 require some judgment? You know that?

24 A. Sure, yeah.

25 Q. So there's some subjectivity even within the Static-99.

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1 Correct?

2 A. Sure.

3 Q. And as you have mentioned here today, you agree that  
4 there's clear acknowledgment that individuals under forensic  
5 observation are historians -- as historians are poor historians  
6 and it's hard to rely on them. Correct?

7 A. I would say the circumstances of -- generally speaking,  
8 yes, the circumstances of forensic evaluation are such that  
9 there's all sorts of different motives. Nevertheless, you  
10 can -- this is not always true and you can get sometimes  
11 remarkable admissions from someone.

12 Q. Do you remember testifying in the case of United States v.  
13 Felix Cartegena in the Eastern District of New York in January,  
14 2011?

15 A. It rings a bell, yes.

16 Q. You have it listed on your list of cases that you've  
17 testified in.

18 A. Okay.

19 Q. So presumably it's -- I don't have the wrong Dr. Krueger.  
20 In that, you said, at Page 12 of the transcript, Lines 7 to 10,  
21 There is a clear acknowledgment that individuals under forensic  
22 observation are poor historians and you can rely upon them, and  
23 then you cut yourself off and you say --

24 MS. FREESE: Your Honor, I just request a copy of the  
25 transcript. Excuse me. I don't have -- I'm not privy to what

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1 he's looking at.

2 (Handing.)

3 MS. FREESE: Thank you. What page were you on?

4 MR. BERRY: Page 12, Lines 7 to 10, of the Cartegena  
5 transcript.

6 BY MR. BERRY:

7 Q. You say, The reliability is, quote, exceedingly  
8 questionable on self-report. Does that sound right?

9 A. Sure, yeah.

10 Q. You don't put that in your report, though, do you?

11 A. I did not indicate that specific disclaimer, no, in this  
12 report.

13 Q. In another transcript, in United States v. Rakesh Pun,   
14 P-u-n-n, also in the Eastern District of New York -- this one  
15 was more recent, in December of 2015. Does that ring a bell?

16 A. Sure.

17 Q. In that one you said, It's a basic assumption that it could  
18 not be truthful. And you're referring to, in that case, that  
19 defendant's self-report. And that is Page 47, Lines 2 to 5, of  
20 the transcript. Does that sound about right?

21 A. Sure.

22 Q. You say, again, in that case, on Page 80, Lines 7 to 10,  
23 His reliability is questionable. The most important evidence  
24 was that provided by the government's investigation. Sound  
25 about right?

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1 A. Sure.

2 Q. In your report, from Page 3 to 14 of your report, you refer  
3 to "Augusta said" or "he said" 102 times. Does that sound  
4 about right?

5 A. Sure.

6 Q. And you've cited other authors in your report. You talked  
7 about Hanson and the other people that validate these  
8 instruments. But nowhere in your report do you say that  
9 Augusta's statements should be understood in the context of  
10 reliability that is, quote, exceedingly questionable. You just  
11 don't do that, do you?

12 A. I did not put that in the report, no.

13 Q. If you would, please, turn to your report -- and the court  
14 may want to look at this, as well, Page 6. It's the first full  
15 paragraph. It starts with, Mr. Augusta said that since his  
16 arrest he had been in custody. That's the first sentence.  
17 When you're there, let me know.

18 A. Yeah, sure.

19 Q. Okay. In that paragraph, you say something that's puzzling  
20 to me, and I'm hoping you can enlighten me. You say, a couple  
21 lines down, Mr. Augusta also said that he had some child  
22 pornography. He said that he would not use this or masturbate  
23 to these images even though he had a substantial number of  
24 images in his possession.

25 This is in the paragraph about him being in custody.

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1 Are you saying that he had child pornography in jail?

2 A. No, no.

3 Q. Okay.

4 A. This is a reference to the past.

5 Q. Okay. Because in the previous paragraph, you're talking  
6 about all the past stuff, but when you pivot to this paragraph,  
7 you're talking about in custody, he's had, on several  
8 occasions, other inmates that threatened him, said that he had  
9 never been physically attacked or abused, all that's about  
10 custody, and then you throw in this line about possession of  
11 child pornography.

12 A. It was inartfully done, but yes.

13 Q. I was giving you the benefit of the doubt, because I would  
14 have been really stunned if that was the case, so I appreciate  
15 you making that clear for me.

16 Did you know that -- one of the things you reviewed  
17 was Dr. Foley's report. Correct?

18 A. Yes.

19 Q. In Dr. Foley's report on Page 3, he says that -- Augusta  
20 tells Dr. Foley that he tried suicide at age eight. But on  
21 Page 4 of your report, you say that he told you he tried  
22 suicide in high school. Did you note that discrepancy?

23 A. I did not note it, did not note it. I mean, it's not  
24 unusual for there to be discrepancies. I mean, a history,  
25 I'm -- just in the whole matter of narration and so on, I'm

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1 writing quickly, I dictate, there's substantial room for error,  
2 and I would just say that this -- I think this is consistent in  
3 that he described this incident of attempted suicide at a young  
4 age, eight, high school, whenever.

5 Q. Eight, high school, whenever. Is that your testimony?

6 A. That's just what I said. I think the -- what I was trying  
7 to convey is that there can be discrepancies in history, in the  
8 history that I obtain that are on the basis of transcription or  
9 of note-taking and so on.

10 I think that the -- I would -- the fact that he  
11 contained -- that he made a suicide attempt at a young age has  
12 been documented, acquired and documented by several  
13 individuals, and I think that's the important feature.

14 Q. Also, Augusta told Dr. Foley on Page 4 that he had oral sex  
15 with a 16-year-old, but he told you it was a 14-year-old. You  
16 didn't note that discrepancy in your report between you and  
17 Dr. Foley, either. Correct?

18 A. I did not draw attention, even be aware of or draw  
19 attention to that discrepancy.

20 Q. Augusta told Dr. Foley on Page 4 of his report that he also  
21 had sex at the age of 13 with, quote, another peer, Dr. Foley's  
22 term, but he told you it was with a 15-year-old. You didn't  
23 explain that discrepancy, either, did you?

24 A. Again, I did not go sort of line by line in terms of  
25 discrepancies. There can be, oftentimes, a lot of discrepancy



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1 in history depending upon how the question is presented, how  
2 much challenge there is, and so on. It's a -- history is not a  
3 straightforward, objective matter.

4 Q. It could also be made up. Right?

5 A. Sure, that's a possibility.

6 Q. Augusta told Foley that he had tried marijuana, but he told  
7 you only alcohol, no drugs. You didn't note that discrepancy,  
8 either, did you?

9 A. Correct.

10 Q. He also told you and you put in your report that, quote,  
11 Perhaps a year prior to his arrest, he began slapping his  
12 brother and sexually abusing him, end quote. But what you  
13 didn't do is explain in your report that he was minimizing,  
14 because there is, in fact, video evidence that as early as  
15 March of 2013, a full 28 months before he was arrested, that he  
16 was sexually abusing members of his family, including Victim 1  
17 in this case. You didn't note that, did you?

18 A. I did not note that. Again, this is a narrative acquired,  
19 and there are -- you can acquire -- there's a lot of  
20 flexibility in terms of the information which can be obtained.  
21 It depends upon the degree of denial or willingness of  
22 somebody --

23 MR. BERRY: Objection. Nonresponsive.

24 BY MR. BERRY:

25 Q. The question is yes or no. Did you include it in your

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1 report?

2 A. Did I include what in my report?

3 Q. That there was a discrepancy between what he told you and  
4 what he told Dr. Foley?

5 A. I did not.

6 Q. Now, with regards to the self-report and being subjective  
7 and exceedingly questionable as you have testified before,  
8 there is an objective instrument, and you discussed it earlier  
9 today. I'm going to call it the PPG just because I can't say  
10 the word, to be quite frank. Do you know what I'm referring  
11 to?

12 A. Sure.

13 Q. Can you say it for me?

14 A. The penile plethysmograph.

15 Q. There you go. Thank you. So for the record, I'm going to  
16 call it the PPG, and that's often what it's shortened as.  
17 Correct?

18 A. Sure.

19 Q. You could have used that to try to confirm or corroborate  
20 some of the subjective information you got from Mr. Augusta.  
21 That was at least an instrument that's available. Correct?

22 A. Yes.

23 Q. But you didn't do that, did you?

24 A. Again, I think that I did not for many reasons.

25 Q. Now, let's talk about these instruments that you utilized,

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1 these risk assessment instruments. You agree that they are not  
2 predictive. Correct?

3 A. Well, it depends what you mean by "predictive." They'll  
4 give you a -- they'll give you some risk, but there's no  
5 absolute prediction of one thing or another.

6 Q. In the Cartegena case in January of 2011, you said, The  
7 diagnostic tools allow you to assess risk of recidivism. You  
8 can't predict future behavior. Right?

9 A. Sure, yeah.

10 Q. So you agree they're not predictive. Correct?

11 A. Of course, yes.

12 Q. And you agree that you personally cannot predict what this  
13 man is going to do tomorrow or 45 years from now or 80 years  
14 from now?

15 A. Yes, I agree.

16 Q. You can't predict whether this defendant will rape again,  
17 can you?

18 A. No.

19 Q. All these tools do is establish a risk for a type of person  
20 that has similar traits. Correct? Is that fair?

21 A. Well, I think it allows you to -- some of these instruments  
22 rely upon other types, and they would develop a risk. I think  
23 that a particular -- that an interview and this assessment  
24 allows one to establish a risk for this particular person, a  
25 risk of a general matter. These would rely on statistical

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1 databases for these other risk assessment instruments, but this  
2 interview and this assessment were for Mr. Augusta in  
3 particular.

4 Q. And even the Static-99, which seems to be one of your  
5 favorites, cannot purport to make an individualized assessment  
6 of future conduct any more than a life expectancy table can  
7 provide an accurate prediction of when someone is going to die.  
8 Do you agree with that?

9 A. Yes, I agree.

10 Q. In fact, do you know what the accuracy is of the Static-99?

11 A. I'm not sure what you're referring to. "Accuracy" is a  
12 broad word. I think that I would rely more upon its validation  
13 research. It really depends on the particular study and the  
14 particular study's concern.

15 Q. Well, did you know that the manual itself uses the term and  
16 says, quote, The Static-99R also has a number of weaknesses; on  
17 average, it demonstrates only moderate predictive accuracy, end  
18 quote? Do you know that?

19 A. That sounds like a statement emanating from the manual, and  
20 I would agree with it. I would concur with the manual.

21 Q. You didn't put that in your report, did you?

22 A. I did not, no.

23 Q. All right. Let's talk about the word "recidivism." We've  
24 been throwing that around a lot today. It's a pretty important  
25 word in this case. You never define it in your report. Can

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1 you give me your definition of it today?

2 A. Recidivism would be the likelihood of somebody committing  
3 another sexual crime.

4 Q. Committing another sexual crime?

5 A. Yes, that would be sexual recidivism.

6 Q. In the manual of the Static-99, it says, quote, For  
7 Static-99R, the recidivism criteria is considered a new charge  
8 or conviction for a sex offense. That's different, don't you  
9 agree, than committing another sexual crime?

10 A. Yes, inasmuch as you have to be charged. You could commit  
11 a crime, and the Static-99 requires that you be charged with  
12 that new crime.

13 Q. So you agree there's a difference in that definition  
14 between the one you just gave, which is recidivism means  
15 committing another sexual offense?

16 A. Yes.

17 Q. That, I agree, is an important question, versus was he  
18 charged or convicted of doing it.

19 A. Yeah, sure.

20 Q. Two different things?

21 A. Of course.

22 Q. In fact, are you aware of the cases that have criticized  
23 the Static-99 as saying -- for example, United States v.  
24 McIlrath, 512 F.3d, 421 at 425, a Seventh Circuit case from  
25 2008 that says, The Static-99 treats as a recidivist only

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1 someone who is convicted of a further sex offense, but the  
2 recidivism concern is with someone who commits a further  
3 offense whether or not he is caught; yet if he is not caught,  
4 his subsequent crime does not affect the data on which the  
5 Static-99 calibrations are based. Do you agree with that?

6 A. Yes.

7 Q. On Page 14 of your report, you reference the Static-99 and  
8 you say, Mr. Augusta's risk of sexual reoffense is moderately  
9 high. Did you mean reoffense, or did you mean reconviction?

10 A. I meant reoffense, the likelihood that he would do  
11 another --

12 Q. But the Static-99 is not validated for that, don't you  
13 agree?

14 A. Well, the sort of samples that are used to validate it  
15 require this to come -- require crimes to come to some  
16 attention, and the only way they're going to come to attention  
17 is if somebody has been arrested, charged, convicted, or  
18 whatever. That's in terms of validation of the Static-99.

19 My understanding of the use of this is that it can be  
20 used to give the risk of recidivism. And recidivism is --  
21 would be for any sexual crime, not for -- if you're talking  
22 about an actual identified sexual crime, this would fall into  
23 the sort of matter of validating the Static-99.

24 But in terms of its use in terms of predicting risk, I  
25 don't think that this -- the risk pertains to, I would say, in

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1 my use of it and understanding of it, to behavior, to criminal  
2 behavior, be it detected or not detected.

3 Q. But we just went over the Static-99 manual, and it defines  
4 recidivism as a new charge or conviction of a sex offense. And  
5 you're saying that you're going to use that basis to say he's  
6 an above average risk or a moderate risk to say he's actually  
7 going to rape again, and that's not what it does, does it?

8 A. I would disagree. I think that it gives you an estimation  
9 of the likelihood of recidivism, measured or not. The whole  
10 idea of measuring it or not is a separate question that  
11 contributes to the validation of the Static-99 or not.

12 Beyond that, there are these other instruments in this  
13 whole evaluation which result, in my opinion, in terms of risk,  
14 and that opinion about risk is not this narrowly defined risk  
15 of reoffense and getting caught at it, it's the -- his risk of  
16 doing this again. That's --

17 Q. Which of the tools you used, Dr. Krueger, can we go and  
18 look at the manual and it says, this is validated for  
19 reoffense, meaning raping again, versus reconviction or  
20 recidivism as defined in the Static-99 and all these other  
21 tools? Which tool, Dr. Krueger, is about reoffense, not  
22 reconviction? Tell me.

23 A. Again, these tools, that specific language is not going to  
24 be found in these various instruments, but if -- in the manuals  
25 of these various instruments. But SVR-20, these are -- this

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1 will give you a capacity to identify features that should be  
2 addressed in treatment. It doesn't say that this is going to  
3 be useful for identifying risk of some future measured sexual  
4 crime.

5 Q. Let me ask you this, Dr. Krueger. Would you agree to the  
6 kid that's getting raped that what matters is whether he gets  
7 raped, not whether the guy gets convicted?

8 A. Of course.

9 Q. What was your referral question in this case?

10 A. I was basically asked to do an assessment of Mr. Augusta  
11 given these charges against him, given the -- I think he may  
12 have pled by that point, but just to do an assessment which  
13 would be a diagnostic and a risk assessment.

14 Q. Do you consider yourself biased for the defendant in this  
15 case?

16 A. I'm hired by the defendant's attorney. I think that the  
17 evaluation that I do is an objective one. I think that I've  
18 had various defense attorneys fire me, basically, or not hire  
19 me again, and I --

20 Q. Like Dr. Foley, I guess.

21 A. Well, he didn't hire me or fire me. I don't know about  
22 him. But, I mean, I think that I would have a duty as a  
23 forensic psychiatrist to protect the public, and I'm not going  
24 to generate a report which is going to minimize somebody's  
25 risk. I mean, if he was a serious risk, I would so say it. I



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1 do this with respect to cases in New York, civil commitments  
2 and so on.

3 Q. What are your billable hours in this case?

4 A. How many are they?

5 Q. Yes, sir.

6 A. That would be, you know, maybe 20 or 40, probably,  
7 ballpark, something like that.

8 Q. Twenty to forty?

9 A. Well, it's \$400 per hour times 40 hours, basically, I  
10 think.

11 Q. And that includes the hour I'm keeping you here?

12 A. It includes today, sure.

13 Q. Okay. Percentage of your work that was for defense  
14 mitigation in the last five years, give me that percentage.

15 A. I'm pretty much a hundred percent. No, I would say  
16 95 percent. I just testified for the Attorney General in New  
17 York.

18 Q. All right. Last year, percentage? The same because you  
19 just testified?

20 A. Last year would be a hundred -- well, I --

21 Q. That's close enough, Doctor. Ninety-five to a hundred  
22 percent?

23 A. Yeah, correct.

24 Q. That's close enough. Thank you. Let's talk about the ACE  
25 score that you reference in your report. There was some

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1 discussion about that between you and Ms. Freese. Do you  
2 recall that discussion?

3 A. Sure.

4 *MR. BERRY:* I'd point the court to Paragraph 15 of the  
5 doctor's report on Page 12 for this section. May I approach,  
6 Your Honor?

7 *THE COURT:* Yes.

8 BY MR. BERRY:

9 Q. Dr. Krueger, I've handed you what's been marked as  
10 Government's Exhibits 4 and 5. Do you see those?

11 A. Yes.

12 Q. Number 4 is what?

13 A. Number 4 is my scoring of the ACE.

14 *MR. BERRY:* At this time, Your Honor, the United  
15 States moves for the admission of Government's Exhibit 4.

16 *MS. FREESE:* No objection.

17 *THE COURT:* Four is admitted.

18 BY MR. BERRY:

19 Q. What's Number 5?

20 A. Number 5 is a letter dated October 31st, 2014, to AUSA  
21 Clancy from Daniel Myshin.

22 Q. Keep going. Turn a couple pages. Do you recognize it  
23 more?

24 A. It has a report appended of a Zachary Knight.

25 Q. Who wrote that report?

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1 A. I did.

2 MR. BERRY: At this time, Your Honor, the United  
3 States moves for the admission of Government's Exhibit 5.

4 MS. FREESE: Your Honor, until I have more  
5 information, I guess, on the purpose for the admission of this  
6 exhibit, I would object to it.

7 THE COURT: Sustained pending further explanation.

8 MR. BERRY: Sure.

9 BY MR. BERRY:

10 Q. So in this report, this Knight, what I'm calling the Knight  
11 report, Exhibit 5, Doctor, did you also utilize the ACE scale  
12 on that subject?

13 A. Yes.

14 MR. BERRY: That's the relevance, Your Honor. It's  
15 for impeachment about his assertion in this case versus that  
16 one.

17 THE COURT: I'm not sure I get the connection. Who is  
18 this defendant, Zachary Knight?

19 MR. BERRY: Let me do it this way.

20 THE COURT: Okay.

21 MR. BERRY: Let me try another way.

22 BY MR. BERRY:

23 Q. Dr. Krueger, in this case, you said Mr. Augusta had a score  
24 of six, quote, which is an extremely elevated score, the worst  
25 I have encountered in my experience, end quote, in your report

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1 in this case. Correct?

2 A. Yes.

3 Q. Tell me what you scored Mr. Knight.

4 A. Ten, ten out of ten.

5 Q. Ten out of ten, yet this is the worst you've ever seen,  
6 except for the one you did recently that was seven, and that's  
7 also now the worst one. Correct?

8 A. This would be the worst. My memory failed me. This would  
9 be in 2014, yes.

10 MR. BERRY: At this time, Your Honor, the United  
11 States moves for the admission of Government's Exhibit 5.

12 MS. FREESE: I'd still object, Your Honor. I mean,  
13 it's offered for impeachment purposes. It's in the record. I  
14 don't know that it's appropriate to enter the report in the  
15 record.

16 MR. BERRY: You know what, it's actually okay with me,  
17 Your Honor. Because it has some personal information, we would  
18 probably want to redact everything except that paragraph. So  
19 I've got in what I needed.

20 THE COURT: Okay.

21 MR. BERRY: I'm happy to not admit the exhibit itself.  
22 The court has heard the testimony.

23 THE COURT: Okay.

24 BY MR. BERRY:

25 Q. You agree that that report makes this report inaccurate, at

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1 best?

2 A. Well, I would say that it makes my particular assertion  
3 about the ACE, the score on the ACE, it definitely indicates  
4 that I was erroneous in this assertion that this was the worst  
5 that I had seen. But I would take issue with applying that  
6 error to the rest of the report.

7 Q. Fair enough, Dr. Krueger. I was not implying that. I mean  
8 with respect to the ACE scale, when you make the rather  
9 assertive statement this is the worst I have encountered in my  
10 life at a six, except for my testimony earlier today about the  
11 seven that I did recently and except for this report that you  
12 did in this district three years ago that was a ten out of ten,  
13 except for that, you agree that this is inaccurate on this  
14 point. Correct?

15 A. Yes.

16 Q. You also agree that -- in your report you say that many of  
17 the diagnostic instruments that I have used have not been  
18 validated using DSM-5 criteria. Correct?

19 A. I'm sorry, what's -- yes, correct, yes.

20 Q. You say that in your report here today. Correct?

21 A. Um-hum.

22 Q. And the DSM-5 was published in 2013. Correct?

23 A. Yes.

24 Q. And you were part, as you testified earlier today, part of  
25 the team of people that helped write the 5, the DSM-5, for

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1 about five years. Correct?

2 A. Yes.

3 Q. In fact, you have also advocated for greater tolerance of  
4 pedophiles. Isn't that correct?

5 A. Yes, in a variety of venues, yes.

6 Q. You actually wrote a commentary called, quote, A Favorable  
7 View of the DSM-IV Diagnosis of Pedophilia and Empathy for the  
8 Pedophile. Correct?

9 A. Yes.

10 Q. And in that you said, quote, Overall, we have found that  
11 individuals who are pedophiles have been and continue to be  
12 subject to great condemnation and discrimination by society,  
13 and any work that would enhance tolerance of them is most  
14 welcome. You wrote that. Correct?

15 A. Yes, sure.

16 Q. Let's talk about the Static-99 for a moment.

17 *MR. BERRY:* May I approach, Your Honor?

18 *THE COURT:* Yes.

19 BY MR. BERRY:

20 Q. I've handed you what's been marked as Government's Exhibit  
21 6. Do you see that?

22 A. Yes.

23 Q. What is it?

24 A. It's my scoring of the Static-99R.

25 *MR. BERRY:* At this time, Your Honor, the United

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1 States moves for the admission of Government's Exhibit 6.

2 *THE COURT:* Any objection to six, Ms. Freese?

3 *MS. FREESE:* No, Your Honor.

4 *THE COURT:* Six is admitted.

5 *MR. BERRY:* May I publish?

6 *THE COURT:* Yes.

7 BY MR. BERRY:

8 Q. Now, when we look at this test, Dr. Krueger, when it talks  
9 about the risk factors, age at release, ever lived with, index  
10 nonsexual violence, all those things down through there, at no  
11 point -- and I think maybe the judge got at this earlier, the  
12 test does not account for the type of violence used by the  
13 defendant, does it?

14 A. It does not -- well, no, it would -- certainly it would  
15 inasmuch as there's an issue of index nonsexual violence or  
16 prior nonsexual violence. So this would actually be violence  
17 which is nonsexual. So it considers violence important, but  
18 not the type of sexual abuse.

19 Q. So, for example, it doesn't account for the fact that he  
20 used a handle of a hammer up the anus of a six-year-old boy.  
21 It doesn't account for that, does it?

22 A. That's correct. It does not -- the type of sexual abuse  
23 has not been identified as a risk factor.

24 *MR. BERRY:* Objection. Nonresponsive to the question.

25 BY MR. BERRY:

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1 Q. Does it consider that fact, yes or no?

2 A. Well, I would say that one would have to look at the use of  
3 violent implementation in the index crime and to that -- and  
4 decide whether that was sexual or nonsexual.

5 Q. Right. But it doesn't talk about the type of violence  
6 other than that binary question of sexual versus nonsexual. Do  
7 you agree with that?

8 A. Yes.

9 Q. It doesn't refer to slapping, punching, and hitting the boy  
10 specifically. Correct?

11 A. Well, it would in the sense that if there are separate  
12 charges for violence, such as a threat or use of a gun or  
13 injury and so on, it would take that into account. Otherwise,  
14 it --

15 Q. Actually, it wouldn't, because you'd only get a one point  
16 regardless. Correct?

17 A. Yes. But it -- if there's -- well, it would have to be  
18 charged. I mean, if it's violence occurring as part of sexual  
19 sadism, it would not count. If there's -- however the violence  
20 occurs, if it results in a separate nonsexual charge, separate  
21 nonsexual charge of violence, then it would be -- then it would  
22 count.

23 Q. But just once?

24 A. You would just get a point on that, yes.

25 Q. You'd get a point for slapping, and you don't get an extra



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1 point for using a handle of a hammer to sodomize him. Correct?

2 A. Correct.

3 Q. And you don't get an extra point for using a knife against  
4 the throat of this boy, do you?

5 A. Correct, no.

6 Q. And you didn't make any note in your report about how the  
7 Static-99 does not take into account the severity of the crime,  
8 did you? Yes or no.

9 A. I did not. It's not part of the instrument.

10 Q. You also failed to follow proper protocol by including a  
11 statement as to whether you considered the score an accurate  
12 representation of the offender's risk given the characteristics  
13 that were excluded from the 99. Isn't that correct?

14 A. I did not make such a statement.

15 Q. In fact, there's a new tally sheet that you didn't use.  
16 Correct?

17 A. That's correct, although I did regrade -- I used the new  
18 tally sheet subsequently as I reviewed for this. I don't have  
19 it before me, but I looked at the new tally sheet.

20 Q. But you didn't provide it to us, did you?

21 A. That's correct.

22 Q. And in it, instead of calling it moderate or whatever you  
23 called it, it actually calls him above average risk. Correct?

24 A. Yes, probably, yes.

25 Q. Now, with regards to Number 8 on the Static-99, do you see

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1 where it says, Any unrelated victims?

2 A. Correct.

3 Q. Why did you mark that as a no?

4 A. Because at the time I understood that a victim had to be --  
5 I understood that the victimization was of a picture of an  
6 unrelated victim, and you're not allowed to count pictures. It  
7 has to be an actual hands-on victim.

8 I subsequently have learned that apparently there is  
9 an image of him touching the 16-year-old -- 16-month-old  
10 individual, which would make it a hands-on crime, and thus I  
11 would add one point to the score.

12 Q. In fact, you asked that very question of the defense --  
13 because you knew it could influence the Static-99, you asked  
14 that back in July after you had interviewed him. Correct?

15 A. Asked -- well, I'm not sure who I -- I may have -- I'm not  
16 sure who I asked. It could have been, it could have been a  
17 question to the attorneys. I'm not sure.

18 Q. Your question on July 12th, 2017, to the defense team was,  
19 First, was -- you say "where," I think you mean "there" -- was  
20 there in the discovery or where in the discovery there is  
21 reference to Mr. Augusta's sexual abuse of an infant and was  
22 this ever charged separately? And if there was this additional  
23 child, was this child a relative? And then you say, The reason  
24 the first of the question above is important is that this  
25 information could influence his score on the Static-99.

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1 Correct?

2 A. Sure.

3 Q. When did you finally learn this?

4 A. When I obtained the presentence investigation, presentence  
5 evaluation report from the -- it was just provided to me in the  
6 past day or so, couple days.

7 Q. But you didn't proffer an addendum to your report saying,  
8 whoops, I got that one wrong?

9 A. I have not, no.

10 Q. I'd like to turn to the Hare psychopathy, the PCL-R for a  
11 moment. It's already in evidence, so if we could go back to  
12 it. It's Exhibit Number 1. You agree that the greater the  
13 psychopathy rating, the higher the risk of being convicted of a  
14 new sex crime. Correct?

15 A. Yes.

16 Q. You scored him at a 15 and said in your report that the  
17 cutoff for psychopathy is 30. Correct?

18 A. Yes.

19 Q. Yes?

20 A. Yes.

21 Q. In the report, you said, quote, This is an elevated score.  
22 But you never said in your report that regardless of the  
23 cutoff, the higher, the greater the risk. Correct?

24 A. I did not.

25 Q. In fact, you have said in the Cartegena case, in the

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1 transcript at Page 73, Lines 3 to 5, that, quote, There must be  
2 a thousand peer-reviewed articles on it which shows the higher  
3 the Hare score, the greater the risk of recidivism, end quote.

4 Correct?

5 A. Yes.

6 Q. Now, you didn't put that in your report, did you?

7 A. Correct.

8 Q. By the way, what is the cutoff for psychopathy?

9 A. It's 30.

10 Q. In the Punn transcript, on Page 47, at Lines 15 to 17, you  
11 testified that this particular defendant had a score of nine,  
12 and that was well below the threshold of 25 or 30.

13 A. Well, I think, depending upon different articles, there's a  
14 threshold of 25 or 30 for psychopathy.

15 Q. Did you say 25 or 30 in Punn because that guy had nine, so  
16 he was way off of it, but in this one, with 15, maybe we should  
17 push it up to 30, make him look further away? Is that why you  
18 did that?

19 A. That was not my intention, no.

20 Q. Now, on the checklist, you mark it as -- we talked about  
21 this previously -- yes, no, or maybe. Correct?

22 A. Yes.

23 Q. And you never said in your report that you marked this guy  
24 a maybe nine times. Nine times you put him on the bubble.

25 Right?

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1 A. Okay, sure.

2 Q. Now, you agree that, as we talked about earlier, another  
3 rater could look at this, and your maybe could be a yes or a no  
4 for that rater. Do you agree with that?

5 A. Yes.

6 Q. It would not be unreasonable for another rater to look at  
7 this and mark him, let's say, one off of you. Correct?

8 A. Yes. Again, it would depend upon the qualifications and  
9 training of the rater.

10 Q. Of course. So on each of these maybes, another rater could  
11 call them a yes. Right? That would raise him from a 15 to a  
12 24. Do you agree with that math?

13 A. Yes. I mean, any of these another rater could disagree.

14 Q. In fact, you didn't have a second person rate this guy, did  
15 you?

16 A. I did not.

17 Q. And, in fact, the Hare organization, the website itself  
18 talks about how, quote, We further recommend that wherever  
19 possible, the PCL-R scores of two independent raters should be  
20 averaged. But you didn't do that, did you?

21 A. I did not.

22 Q. So another one could have rated him a 24 or maybe even a  
23 29, and we'd have to average those two scores. Do you agree  
24 with that?

25 A. Well, I think that one could have -- you could have another

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1 individual rate. I think that there have been studies that  
2 show that on average, there's a five- or six-point discrepancy  
3 between defense experts who rate the Hare and prosecution  
4 experts. And this is --

5 Q. What we call the partisan allegiance effect. Correct?

6 A. I'm not sure what it's called. That nomenclature makes  
7 sense. But this is well described.

8 Q. How would you rate yourself in terms of compassion and  
9 empathy, so to speak?

10 A. I think I'm compassionate. I think I'm empathic.

11 Q. Are you familiar with the study that says that if the  
12 rater, in this case you, scores high on a couple of factors,  
13 compassion and empathy being one of them, that they are less  
14 likely to score an individual closer to the psychopathy,  
15 psychopathic threshold? Are you familiar with that study?

16 A. I'm not aware of that particular study.

17 Q. Does it surprise you?

18 A. No.

19 Q. If you would, please, look at Government's Exhibit 3  
20 already in evidence. It's the SONAR, Dr. Krueger.

21 A. Okay.

22 Q. On your screen, I've highlighted a portion. Do you see  
23 that there? It says, It is possible.

24 A. Sure.

25 Q. And it says, It is possible that the dynamic factors

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1 identified in the current study may be more important for  
2 determining the timing of reoffending than for determining  
3 which offenders will eventually recidivate given long followup  
4 periods. Do you agree with that, that it says that?

5 A. Yes.

6 Q. Sorry, I didn't mean to take that off the screen. You  
7 didn't put that in your report about the predictive accuracy or  
8 the utility of the SONAR, did you?

9 A. I did not.

10 Q. You also talk a lot about Mr. Augusta being a victim  
11 himself. Correct?

12 A. I don't know a lot about it, but I mention it.

13 Q. Fair enough. I gave a subjective term there. I appreciate  
14 you biting into it. You agree, though, don't you, that a  
15 history of being a victim actually increases a person's risk of  
16 recidivism? Correct?

17 A. Yes.

18 Q. You've testified to that fact before. Isn't that right?

19 A. I may have. I'm not quite -- I don't recall exactly when,  
20 but --

21 Q. Do you know what the MacDonald Triad is?

22 A. I do not.

23 Q. The set of three factors that when two are present, they  
24 tend to predict later violent tendencies, like, for example,  
25 homicidal -- serial killers, things like that. You're not

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1 familiar with that?

2 A. No.

3 Q. Did you read the Foley report on Page 3 where it documents  
4 two of those factors? What is enuresis? What does that mean?

5 A. That means urinating at night, basically.

6 Q. And it says that he wet the bed until the age of 12 or 13,  
7 and it also says he was engaged in fire-starting from the age  
8 of nine to early adolescence. You didn't mention any of that  
9 in your report, did you?

10 A. Correct.

11 Q. And are you not familiar with the fact that those factors  
12 are considered important when people assess the dangerousness  
13 of an individual?

14 A. Well, I think -- now that I -- that particular term doesn't  
15 ring a bell, but I would say these three factors do, when  
16 there's been substantial literature, I think earlier literature  
17 supporting this and subsequent literature saying that this is  
18 not so important or predictive. That's my general  
19 recollection.

20 Q. But you didn't mention any of it in your report. Right?

21 A. I did not, I did not.

22 Q. You also did not mention in your report that in one of his  
23 psych evals when he was 12, that he got so enraged at a  
24 12-year-old girl at a YMCA pool that he pulled her under and  
25 nearly drowned her. You didn't note that, did you?



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1 A. I did not.

2 Q. Now, you talk about treatment in this case and say he has a  
3 good prognosis. But you agree that it's very difficult to  
4 treat someone with a fixated pattern of deviant behavior.  
5 Correct?

6 A. I'm not sure I would characterize the -- I would use  
7 "very." I think that it's -- it's challenging to treat  
8 somebody with a pattern of deviant behavior.

9 Q. In the Cartegena transcript, on Page 101 at Lines 18 to 22,  
10 you said, quote, The research does not well distinguish between  
11 treating pedophilia and treating other sexual deviant behavior.  
12 I think available research would suggest that if somebody has a  
13 fixated pattern of sexual deviance, it's hard to treat, much,  
14 much harder to treat.

15 A. Yeah, I would agree.

16 Q. You never stated in your report that someone like Augusta  
17 is the kind of person that is much, much harder to treat, you  
18 just said, good prognosis for treatment. Correct?

19 A. I'm not sure I would -- that's a simple -- that's a  
20 conclusory remark. I think I said that he had a good  
21 prognosis, and I would say, perhaps, he's bright, motivated, an  
22 excellent candidate for therapy.

23 Q. You say, quote, He's an excellent candidate for therapy and  
24 sex offender-specific therapy and, in my judgment, has a good  
25 prognosis for treatment. Correct?

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1 A. Yes.

2 Q. But nowhere in the report did you talk about the studies  
3 that show that treatment is largely ineffective for these  
4 people, did you?

5 A. Well, I did not. I would say that there's some controversy  
6 regarding that assertion that treatment is largely ineffective.  
7 I mean, there have been some large studies which have been  
8 disappointing, but there are also some other studies of an  
9 analytic nature that show that treatment is effective.

10 And there are certainly many, a variety of other  
11 studies, one of which I provided in terms of this New England  
12 Journal of Medicine article, which show that an open design is  
13 very effective, it's just a matter that there's not funding or  
14 a history that has allowed for large-scale, scientifically  
15 valid studies.

16 Q. In the Cognitive-Behavioral Treatment of Paraphilias, an  
17 article you wrote in the Israel Journal of Psychiatry and  
18 Related Science in 2012, you said -- you summarized some  
19 studies and said, Although recidivism was low initially,  
20 relapse rates continue to rise even ten years after treatment.  
21 Do you remember writing that?

22 A. I wrote that article. I don't know exactly what I was  
23 referring to, but I do not dispute that I wrote that.

24 Q. In another -- in the same article later on you're  
25 summarizing another series of empirical studies, meta-analysis,

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1 and you summarize and you say, They concluded that, quote,  
2 there is, as yet, no evidence that clinical treatment reduces  
3 rates of sex offense in general and no appropriate data for  
4 assessing whether it may be differentially effective for  
5 different types of offenders. You wrote that, too, didn't you?

6 A. Yes, I would stick by that basically.

7 Q. In the same article you also said, quote, Evaluation of  
8 recidivism has proven extremely difficult, in part due to  
9 underreporting of sexual crimes. Does that sound about right?

10 A. Sure.

11 Q. And that goes back to our issue about what does recidivism  
12 mean. Right?

13 A. Yes.

14 Q. Reoffense versus reconviction. Correct?

15 A. Yes.

16 Q. You also don't mention in your report that in Dr. Foley's  
17 report, he documented that Augusta told him that when he was in  
18 a psychiatric hospital in 2007, that he, quote, conformed to  
19 hospital expectations, quote, to get out of the facility, end  
20 quote. You didn't include that in your report either, did you?

21 A. Correct.

22 Q. And you agree that having been abused himself does not mean  
23 that was the cause of Mr. Augusta abusing Victim 1 or any of  
24 the other victims. You agree with that. Right?

25 A. Of course, yes.

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1 Q. Causation is not -- correlation is not causation. Correct?

2 A. Correct.

3 Q. In fact, you wrote in a letter in 2011 to the Archives of  
4 Sexual Behavior that, quote, The psychiatric -- or, excuse me,  
5 The psychiatric community, quote, currently lacks sufficient  
6 science to establish the etiology for many psychiatric  
7 disorders, end quote. What does "etiology" mean?

8 A. Etiology.

9 Q. Thank you.

10 A. The origin, the etiology, the cause, the sort of origins of  
11 psychiatric disturbance.

12 Q. In all of the things that you listed in your report that  
13 you reviewed, the 20-odd things, none of them were the  
14 contraband in this case. Right? You did not review the  
15 contraband. Isn't that correct?

16 A. By "contraband," you mean video images or pornography? I  
17 did not, no.

18 Q. You've done that in other cases, though, haven't you?

19 A. Sure.

20 Q. In fact, you have testified before, specifically in the  
21 Cartegena case again, at Page 7, Lines 20 to 25, you said,  
22 Certainly self-report is one element of evidence. There are  
23 other elements which we would rely upon, including the  
24 evidentiary record of discovery, which we talked about, and  
25 particularly useful is what a hard-drive analysis might

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1 contain. But yet you didn't look at anything from the hard  
2 drive in this case. Correct?

3 A. Correct.

4 Q. You didn't look at the images from March 10th, 2013, to  
5 March 31st, 2013, that were still images of the defendant  
6 engaging in sexual behavior with Victim 1, his mother, the  
7 adolescent sister, and the adolescent brother, who were not  
8 charged in this case? You didn't look at those. Right?

9 A. I did not. I would say that in the past, you know, before  
10 10 or 15 years ago, it was the case that such images were  
11 allowed to be distributed by defense attorneys.

12 Subsequently, there were various rulings that made  
13 these images basically contraband, so that in order to review  
14 them, one had to actually go into the vaults of the FBI or  
15 wherever and view these, and I did not do that in this  
16 circumstance.

17 I certainly will if it's sort of feasible. I think  
18 that the available resources did not allow this, and I'm able  
19 to, on the basis of what was described, make an opinion. I  
20 don't have to see -- I mean, I will always want and solicit as  
21 much information as I can, but I don't always have to see  
22 images to make an opinion.

23 Q. And you talk about how the law has changed over time, but  
24 it's been the same since 2011 when you were in the Cartegena  
25 case in the Eastern District of New York and 2015 in the Punn

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1 case, and both of those you reviewed the images. Correct?

2 A. Yes.

3 *MR. BERRY:* At this time, Your Honor, the United  
4 States would like to play for Dr. Krueger a compilation of the  
5 contraband in this case and ask him some followup questions  
6 regarding his opinion and whether it's affected.

7 It's about 12 minutes long. It is culled from 49  
8 minutes of video and audio. For example, the nine-minute audio  
9 we played in the Stamm case, Your Honor, pulled out a section  
10 of that. I've tried to truncate it as much as possible. It is  
11 just under 12 minutes. I plan to just play it and then end  
12 with a couple of followup questions, and then I'll be done.

13 *THE COURT:* All right. I'm going to ask that you not  
14 play the videos or audio segments on the screen that is in the  
15 gallery or on any other screen in the courtroom, save the  
16 witness's and the defense attorneys.

17 *MR. BERRY:* That's fine with me. If the court can  
18 help me with that, I'm fine with that, as well.

19 So what I'm going to do, Your Honor, because I'm  
20 looking at my laptop, I'm going to start it playing and then I  
21 will try to tilt the screen down so that the audience doesn't  
22 see that, as well. Maybe a juror's monitor would be a good  
23 idea for the defense attorney.

24 *THE COURT:* That would be fine.

25 BY MR. BERRY:

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1 Q. Dr. Krueger, do you have it on your monitor right now?

2 A. No, the monitor is blank.

3 Q. Okay.

4 A. Okay, now, sure.

5 Q. Do you see it? It says, U.S. v. Augusta, Compilation of  
6 Photos and Videos from March 10, 2013, to July 22nd, 2015?

7 A. Yes.

8 Q. Thank you.

9 MR. BERRY: And most of this doesn't have sound.

10 Occasionally something has sound. So if it had sound, I left  
11 it in, Your Honor. If it didn't, it's not there. I'm not  
12 redacting one way or another. So there's some silence for a  
13 couple of minutes, and then sound will jump in. I don't mean  
14 that to alarm anyone. It's just the way it's cut together.  
15 I'll start now.

16 *(Video/audio recording played.)*

17 BY MR. BERRY:

18 Q. I'm going to pause it for just a second. Can you hear that  
19 okay?

20 A. Sure, I can hear it. I just wondered if there were images  
21 associated with it, which I didn't see.

22 Q. It's just the audio. That's why the sign is in the  
23 middle --

24 A. Sure.

25 Q. -- to signify that.

1           MR. BERRY: Continue.

2           *(Video/audio recording played.)*

3 BY MR. BERRY:

4 Q. That's it, Dr. Krueger. Now, having seen that, does it  
5 change your opinion at all about whether this man can be  
6 managed safely in the community today?

7 A. It does not.

8           MR. BERRY: No further questions.

9           THE COURT: Any questions, Ms. Freese?

10          MS. FREESE: Your Honor, just briefly in a couple of  
11 areas. Nothing at length.

12                               REDIRECT EXAMINATION

13 BY MS. FREESE:

14 Q. Dr. Krueger, how long have you been a doctor?

15 A. Since 1977, 40 years.

16 Q. Okay. So the government just asked you a number of  
17 questions about bias, and because we didn't go through all of  
18 your qualifications based upon their agreement to them,  
19 throughout your career, have you had periods where you've  
20 testified on behalf of the state or the government?

21 A. Yes, sure.

22 Q. And just briefly, when were some of those times?

23 A. When I was in Massachusetts before I moved to New York, I  
24 did evaluations in their sort of civil commitment program. I  
25 must have done a hundred evaluations and was called to testify,



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1 depending upon the result of the evaluation, by defense or --  
2 by the defense or the prosecution. It was roughly 50/50 at  
3 that time.

4 Subsequently, I actually did a number of cases for the  
5 Office of Professional and Medical Conduct that I testified for  
6 the prosecution. And also I guess more recently there was a --  
7 this year there was a case in which I testified for the  
8 Attorney General in terms of the admissibility of a  
9 psychiatric -- of a pedophilia diagnosis.

10 Q. And are your professional opinions driven by who hires you?  
11 Do you shape them depending upon who is hiring you?

12 A. No.

13 Q. And all of the opinions that you've offered throughout the  
14 course of your testimony, you offer them to a reasonable degree  
15 of psychiatric certainty?

16 A. Yes.

17 Q. Now, currently your employment, you work in the treatment  
18 of sex offenders. Correct?

19 A. The assessment and treatment of sex offenders, yes.

20 Q. And that is at least on a part-time basis for the State of  
21 New York?

22 A. It's on a full-time, it's a four-day-a-week, it's  
23 80 percent of my time. So this is what I've done 15, 20 years  
24 full time, 80 percent of my time.

25 Q. And I really just want to talk to you about three of the

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1 tests. Based upon -- are any of your opinions, and I'm not  
2 talking about factual discrepancies, but are any of your  
3 opinions that you rendered in your report changed at all?

4 A. No.

5 Q. With respect to the Static-99, you and I had a number of  
6 discussions about the other victims. Some were charged, some  
7 were uncharged. Is that correct?

8 A. Yes.

9 Q. And specifically, Government's Exhibit Number -- my  
10 apologies. Well, your scoring sheet of the Static-99, which is  
11 Government's Exhibit Number 6, specifically talks about other  
12 victims. Right?

13 A. Yes.

14 Q. And if you change that score to reflect what you now know,  
15 explain how that impacts your opinion, if at all, with respect  
16 to his moderate to high risk conclusion.

17 A. So according to this, let's say there's an unrelated  
18 victim, you would increase the score of three -- to three or to  
19 five. Three would put it still at a low moderate category.  
20 Five would be in the moderate high category. It would not  
21 alter the location of this according to this older scoring  
22 sheet.

23 According to the new one, I think it would place you  
24 in an average -- it would be an above average risk. And if one  
25 looks at a contemporary application, if one waits 30 years, it

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1 would put him in a, I think, below average risk.

2 I don't have the page before me, but the scores would  
3 not change, just the sort of interpretation would. And I think  
4 that he would be -- the older he is, the more he would fall  
5 into an average category.

6 Q. And with respect to the ACE test, you were actually asked  
7 about another case in this district and some of your other  
8 conclusions you've reached. How many times have you  
9 administered the ACE test, if you can ballpark?

10 A. I would say, over the past four, five years, maybe a  
11 hundred times.

12 Q. Okay. And in your report, you indicated that it was, I  
13 think you did specifically say the worst that you've  
14 encountered --

15 A. Yes.

16 Q. -- in your experience.

17 A. Yes.

18 Q. But we know that in another case there was a higher score,  
19 and that was before you rendered that opinion. Correct?

20 A. That's correct.

21 Q. Okay. So given that fact and we know that it's now not the  
22 worst, how would you categorize it in terms of the over one  
23 hundred evaluations that you have done?

24 A. It's among the worst.

25 Q. Among the worst?

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1 A. Among the worst.

2 Q. And just so that we're clear, that score of a seven which  
3 you testified to on direct examination was done after you  
4 rendered your opinion in this matter?

5 A. Yes.

6 Q. Okay. And is the six out of ten, if it's among the worst,  
7 still significantly elevated?

8 A. Yeah, sure.

9 Q. And sort of my final subset of questions are just about the  
10 Hare report. You were asked a number of questions about that,  
11 particularly the cutoff. And explain the cutoff between -- the  
12 difference between 25 and 30 and the difference in the  
13 literature, and then my second followup question would be, is  
14 that significant here?

15 A. Okay. I mean, I think that -- again, I -- there were  
16 different sources for the two numbers. I can't cite them  
17 exactly. The manual may state 30. But if somebody is on the  
18 margin -- I mean, the issue is whether somebody makes a  
19 threshold criteria for psychopathy.

20 That diagnosis or that entity is used, let's say, in  
21 the SVR-20, and I think otherwise it has a certain  
22 significance. The fact that Mr. Augusta had a score of, I  
23 think, 15 places him well below the psychopathic threshold, so  
24 to speak, for these purposes. I mean, even if you concede I'm  
25 four or five points off or six or seven, he still doesn't make

1 that threshold.

2 Q. And I think you indicated on cross-examination that some of  
3 the literature would indicate the difference between a  
4 prosecution and defense evaluation could be as much as five or  
5 six points. Is that right?

6 A. Yes, that's my recollection.

7 Q. Okay. So if we would add -- let's add six. If we would  
8 add six points to your score of 15, he'd still be under the 25.  
9 Correct?

10 A. Yes.

11 *MS. FREESE:* One moment, Your Honor. Your Honor, I  
12 have no additional questions for Dr. Krueger.

13 *THE COURT:* Thank you. Anything else?

14 *MR. BERRY:* No, Your Honor.

15 *THE COURT:* Dr. Krueger, I meant to ask you earlier,  
16 have you ever testified before Congress or the Sentencing  
17 Commission about these matters?

18 *THE WITNESS:* I haven't. It sort of came to me -- I  
19 became aware of this sort of after an initial request. I have  
20 testified before the New York -- committees in New York State.

21 *THE COURT:* Okay. Thank you.

22 *THE WITNESS:* Sure.

23 *THE COURT:* You may step down. Counsel, I have a  
24 telephone call regarding a trial matter that's scheduled for  
25 Monday. It should just take a few minutes. So I'm going to

1 give you a ten-minute recess here so that we can take up that  
2 matter. It should be very brief. It's really just a  
3 scheduling call. Okay?

4 *MS. FREESE:* Thank you, Your Honor.

5 *THE COURT:* We'll be in recess.

6 *COURTROOM DEPUTY:* Court is in recess.

7 *(Recess taken.)*

8 *THE COURT:* Ms. Freese.

9 *MS. FREESE:* Yes, thank you, Your Honor. That  
10 concludes our testimony for the day. At this point we have  
11 three witnesses in the courtroom who would like to offer  
12 remarks as opposed to testimony on behalf of my client.

13 *THE COURT:* All right.

14 *MS. FREESE:* First would be Cheryl Parsons. And, Your  
15 Honor, where would you like Ms. Parsons to stand? At the  
16 podium?

17 *THE COURT:* I would ask counsel for the government  
18 whether they wish to have them sworn as witnesses, or are they  
19 character witnesses? I'm not sure what you've worked out.

20 *MR. BERRY:* Your Honor, if the court is inclined to  
21 ask questions, I'd like them to be sworn. To the extent that  
22 they're just offering a statement, a character statement on his  
23 behalf, I'm happy to expedite this along.

24 *THE COURT:* All right. So the podium is fine.

25 *MS. FREESE:* Okay. Thank you, Your Honor.

1           *THE WITNESS:* My name is Cheryl Parsons. It's spelled  
2 C-h-e-r-y-l, Parsons with an "s" on the end.

3           I am a retired teacher from Carlisle High School where  
4 I taught from 1977 until 2012. I directed three choirs at the  
5 high school, taught music theory and theater experiences,  
6 initiated and was the faculty adviser for the extracurricular  
7 show choir, and I codirected the high school musical.

8           I first met William, who I knew as Will Hunter, when  
9 he was in ninth grade in the fall of 2010. His middle school  
10 music teacher, Mrs. Fry, who served as our rehearsal  
11 accompanist for the high school musical, had encouraged him to  
12 audition for our 2011 production of Titanic.

13           As I recall, Will waited until near the end of the  
14 auditions to sing and read for the audition. He came across as  
15 very self-conscious, and his body language clearly registered  
16 with me as someone who was more than ordinarily fearful. His  
17 posture was drawn in, he didn't make eye contact easily, and  
18 maintained an unusually wide spatial distance between himself  
19 and anyone else, including Mrs. Fry, who he knew well.

20           Although the audition procedure included a group dance  
21 audition in which most students signed up for a time slot that  
22 enabled them to learn and perform the dance combination with  
23 friends, it was evident that Will was there without the benefit  
24 of support from peers. Will had to be coaxed to sing, and we  
25 discovered, to our surprise, that he has a solo quality voice,

1     albeit an untrained one at that time.

2             His reading of text, although not that of an  
3     experienced actor, was fluent with accurate pronunciation, a  
4     varied inflection, and word emphasis that indicated he had good  
5     comprehension of the text.

6             Because Titanic had 24 male roles of various sizes, we  
7     cast him in a minor role that had a few brief lines of solo  
8     singing. This was a bit out of the ordinary since we had no  
9     previous history with Will or could not know how dependable he  
10    might be.

11            Once we got into rehearsal, we learned that Will was  
12    reliable and consistently present on days that he was needed  
13    and clearly aimed to please, although he was rarely satisfied  
14    with his own performance.

15            During rehearsal, he gradually lost most of his  
16    distrust of others, although I can't recall whether he made any  
17    close friends during his first musical of his high school  
18    career.

19            I do recall that during demanding dance rehearsals,  
20    some of the students distanced themselves from Will because of  
21    a perceived unpleasant body odor. If I recall accurately, the  
22    codirector of the musical, who was a male teacher, spoke with  
23    Will about personal hygiene, and I believe he was gradually  
24    more accepted into the musical family afterward.

25            Close to performance time it became clear that another



1 young man with a slightly larger role became academically  
2 ineligible to perform. By this time, we thought highly enough  
3 of Will to ask him to assume the larger role, which required  
4 more line memorization and more solo singing to be learned  
5 pretty much in the eleventh hour.

6 Will rose to the challenge and performed with  
7 confidence and complete accuracy. I distinctly remember a  
8 conversation I had with the high school principal on the day  
9 after he had attended one of the performances. This was the  
10 principal's first year at the high school. Having been the  
11 middle school principal at the school Will had attended the  
12 previous year, the principal exclaimed in utter surprise, what  
13 have you done with Will Hunter? He is such a different person  
14 than he was in middle school.

15 I had not been aware of any back history with regard  
16 to Will, so I was taken aback by his remark. I attributed the  
17 change to the power of music and theater to bring out the best  
18 in people and to bond performers together and never did find  
19 out any particulars at that time about Will's middle school  
20 experiences.

21 Because Will was making such great strides and because  
22 high school boys with talent who will prioritize choral singing  
23 are in short supply, I asked Will to audition for the high  
24 school's most select choral ensemble which met five days a week  
25 for 50 minutes a day, the Carlisle High School Chamber Singers.

1 It was a graded class with full academic weight.

2 He did audition, and he was a very strong tenor during  
3 my final year of teaching before retirement, which was his  
4 sophomore year. Because he went right into Chamber Singers,  
5 Will had missed the beginning level choir's strong emphasis on  
6 learning how to read music and sight-sing.

7 Regardless of that, I encouraged him to participate in  
8 an extracurricular activity that was open mostly just to the  
9 Chamber Singers, the Cumberland County Choral Festival, which  
10 was an extracurricular commitment to learning 12 additional  
11 pieces of music and attending several countywide rehearsals at  
12 other schools.

13 Most of the students who had participated in the  
14 county festival, including Will, also auditioned for district  
15 chorus, which is a two-day festival that is very competitive.  
16 Generally about 800 students audition to be in that chorus,  
17 which is 200 students. Students from seven counties are judged  
18 in rather rigorous two rounds of auditions to select the top 25  
19 singers in each voice part.

20 I held rehearsals over the summer preceding these  
21 auditions and after school to prepare the students for these  
22 festivals. Will was very reliable in attending rehearsals, and  
23 because his music reading skills were not as advanced as the  
24 others, he often asked for extra help, staying for an extra 30  
25 to 40 minutes for some individual instruction. Again, he

1 tended to be very self-critical, never quite satisfied with his  
2 progress, even though it was significant.

3           Once accepted, the district singers needed to learn an  
4 additional seven selections in order to audition for the  
5 prestigious regional chorus. Ultimately Will represented  
6 Carlisle High School quite well both at the county and the  
7 district level.

8           And my memory is a bit hazy as to whether he actually  
9 succeeded in going on to regional chorus or not, although I  
10 remember expecting him to achieve regional chorus the following  
11 year and was disappointed that he did not.

12           During his sophomore year, Will was much more accepted  
13 into the family circle atmosphere of choir students that I  
14 strove to make accessible to everyone. I do recall some  
15 occasions when he was very quiet and withdrawn causing a couple  
16 students to suggest that he didn't care about the success of  
17 the Chamber Singers. In retrospect, it's easy for me to  
18 understand that he was probably going through some tough times  
19 at home.

20           Because the choir took a multiple-day field trip to  
21 New York City each spring involving quite a few fundraising  
22 projects in which parents participated, I usually became  
23 acquainted with parents and siblings of most of my students. I  
24 never remember meeting Will's family at meetings or following  
25 concerts when we sometimes have receptions for the singers and

1 their families.

2 Will participated in the musical again during his  
3 tenth-grade year, this time singing in a barber shop quartet  
4 and having a speaking part in Bye-Bye Birdie. During the last  
5 week of rehearsal and following performances, rehearsals went  
6 quite late into the evening. Will didn't drive at the time and  
7 never had a parent come to pick him up. Sometimes late was  
8 after 11 o'clock at night.

9 On a number of occasions, when the weather was bad, I  
10 drove him home. Again, I never met family after the  
11 productions, even though Will did talk about needing to be  
12 responsible for his brother and sisters from -- or brothers and  
13 sister from time to time. He often voluntarily stayed late to  
14 assist with cleaning up the guy's dressing room, which was even  
15 messier than anyone can imagine. In retrospect, it now seems  
16 clear to me that Will was not eager to go back home.

17 The year after I retired, Will contacted me several  
18 times to assist him with learning his district chorus tryout  
19 selections, as the new choral teacher did not schedule very  
20 much rehearsal time believing that students needed to be strong  
21 enough music readers to learn the music on their own.

22 During this time and again during his senior year when  
23 Will was auditioning for a music education major at Mansfield  
24 University, he came to my home to get assistance. At no time  
25 when I was alone with Will late at night at school cleaning up

1 or taking him home in my car or when he came to my home music  
2 studio did I ever feel afraid of him or sense that he was  
3 anything other than a young man wanting to make the most of his  
4 potential.

5 Although I was aware that he lived with his mother,  
6 grandmother, and siblings, it seemed like the family was  
7 stretched for money. I knew that his mother had respectable  
8 jobs. I was not aware that she had graduated from college. I  
9 never heard mention of Will's father.

10 I direct a community choir in Carlisle that gives four  
11 concert performances each year, and it was my practice to offer  
12 Carlisle High School choir students free admission to the  
13 concert in return for their help in handing out programs.

14 Over the course of his sophomore, junior, and senior  
15 years, Will almost always volunteered and always showed up when  
16 he said he would, unlike some of the other students who were  
17 less reliable. He always dressed appropriately and interacted  
18 with the public in a pleasant and welcoming manner. He clearly  
19 enjoyed staying for the concerts to hear the advanced  
20 repertoire that the choir performs.

21 Sometimes when the concerts were held at venues far  
22 from his home, Will would walk quite a long distance in order  
23 to volunteer. He would often share his reactions to the  
24 concert repertoire with me afterwards and made very astute  
25 observations about the variety of musical styles represented.

1           When I learned of Will's arrest and alleged crimes, I  
2 was completely stunned, and based on their comments on  
3 FaceBook, his friends from the school choral program were  
4 equally surprised. I know from talking with several of them  
5 that the teachers at the high school were in total disbelief,  
6 as well.

7           I had always experienced him as a gentle soul and had  
8 never witnessed any action or gesture that was in any way  
9 threatening or violent. The only anger I had ever seen was  
10 frustration with himself. Compared to most other students, his  
11 level of gratitude and manner of expressing it was very sincere  
12 and mature.

13           I have been corresponding several times a month with  
14 Will for nearly two years, and I believe that he has been  
15 increasingly open with me. I have no reason to believe that he  
16 has been dishonest. I visited him several times at the  
17 Cumberland County Prison and once when he was at Camp Hill.

18           I have also spoken with his grandmother on the phone  
19 probably at least four times. And I think it's important to  
20 note that she allowed me to come to her home twice, once last  
21 winter and once slightly less than two weeks ago when I was  
22 preparing these remarks and I wanted to corroborate the things  
23 that I was saying that Will had told me.

24           She has validated many of the incidents in Will's  
25 family history that he wrote or spoke about to me. His

1 grandmother is 90 years old. She lives in her own home on  
2 Regal View in North Middleton Township. Her niece now lives  
3 with her. I found her to be coherent. She walks with a cane.  
4 She maintains her personal hygiene well and looks remarkably  
5 young for somebody who is 90 years old.

6 She would answer lots of my questions and tell me some  
7 personal stories. She was not willing to offer a lot of her  
8 own personal experience. But here are some things that I  
9 learned that lead me to feel that Will is truly a good person  
10 at heart, one that was a victim of abuse himself, someone who  
11 made some bad decisions when under tremendous stress, and  
12 someone who, in my opinion, is not ultimately a danger to  
13 society.

14 Will has told me and his grandmother has confirmed to  
15 me that his father violently beat him and his mother. He felt  
16 that he was lucky to have survived some of the abuse. It  
17 wasn't until today that I learned that his mother also was  
18 violent with him.

19 Will's grandmother indicated to me on two different  
20 occasions that at birth Will had problems that necessitated  
21 multiple tubes in his head and kept him at the hospital for two  
22 weeks, even though Will was not a premature baby.

23 Will's father seldom, if ever, lived with the family,  
24 failed to provide for the family, in his grandmother's words,  
25 never put a roof over their head, and was imprisoned more than

1 once, possibly, although I can't confirm this, this is what the  
2 grandmother thought, for drug possession or dealing.

3 The seven-year age difference between Will and his  
4 next youngest sibling provided enough time for Will to view  
5 himself as his mother's protector, and his grandmother  
6 corroborated that.

7 Will's father treated him dramatically different than  
8 his brothers and sister. On one occasion at a family reunion,  
9 his grandmother remembers Will's father making Will change his  
10 seat to sit alone at a distance from the rest of the family  
11 during the meal. Will's grandmother had nothing good to say  
12 about Will's father and at one point had been threatened by him  
13 herself.

14 Will's most trusted relationship was with his  
15 grandfather, whose death in 2001 had a significant negative  
16 effect on Will. Will's grandmother told me that she believes  
17 strongly that had his grandfather lived as long as she has,  
18 Will would not be in trouble today.

19 Will was expected to keep quiet about the abuse that  
20 was occurring, to cover up his own bruises and scars, and  
21 according to him, he was sometimes blamed for things he didn't  
22 do, but he didn't speak up in order to preserve the family's  
23 reputation.

24 He wrote me that he kept quiet out of fear, and these  
25 are his direct words, "fear of getting beat, fear of getting my



1 mom beat up, fear of getting my grandmother in trouble or hurt,  
2 fear of getting taken out of the home or having my siblings  
3 removed from the home, fear of being hospitalized, fear that no  
4 one would believe me, fear of making something out of nothing,  
5 so many things that simply boil down to the fact that I was  
6 young and scared."

7 Will lived in Carlisle, Harrisburg, and York and then  
8 back to Carlisle. He attended many different schools. His  
9 grandmother and I were trying to tally them up, and I think  
10 there were at least seven. And he did not develop many  
11 friendships. He was sometimes bullied and picked on and was  
12 sometimes scapegoated for standing up for himself.

13 I only was aware of one instance of bullying in my  
14 class at the high school when one of the young men in choir hid  
15 Will's jacket. It was on a day when Will was staying at school  
16 throughout the day into an evening rehearsal and needed to walk  
17 home when the weather was cold and wet after dark.

18 I didn't discover the prank until the evening of  
19 rehearsal was over and didn't learn what had happened to the  
20 jacket until much later. We were lucky that there was a hooded  
21 sweatshirt in the lost and found in my room that fit Will so  
22 that he didn't need to face the weather without a jacket, and I  
23 think I may ultimately have taken him home that night.

24 Will says he learned early on in life to detach  
25 himself from the family drama as a defense mechanism. He has

1 also told me that he entertained himself at various times in  
2 middle school and sometimes in high school by exploring chat  
3 rooms on the Internet. He said that he was curious about what  
4 made these people tick.

5 Will's Internet activity was not monitored at home.  
6 His grandmother was retired when Will was in high school so was  
7 at home most of the time. She only remembers two or three  
8 times when he had any friends come over to the house. These  
9 friends were, in all cases, girls and on a couple of the  
10 occasions were on prom night.

11 Will attended the prom at Carlisle High School as a  
12 sophomore, a junior, and as a senior. As a sophomore, he was  
13 not really eligible to attend unless he had been asked by an  
14 upperclassman, and that was what happened the first time, a  
15 girl in the class ahead of him asked him to go to the prom.  
16 Two of his prom dates I know were girls from the choir at high  
17 school.

18 According to his grandmother, Will frequently cooked  
19 dinner for the family, and they sat down together to eat it  
20 most nights. Will volunteered at Victory Circle and at Project  
21 SHARE in Carlisle. These are nonprofit organizations to help  
22 the underserved. He was active in the Educational Theater of  
23 Carlisle, in addition to his many musical activities.

24 Will had high hopes of graduating from college and  
25 attended Mansfield University for a probationary summer term

1 that immediately followed his high school graduation. He had a  
2 grade point average of 3.767 that term.

3 When his mother suffered severe health problems as a  
4 result of seizures in November of Will's freshman year in  
5 college, he took a break from college to take charge of her  
6 medical decisions and care and ultimately to find two jobs that  
7 enabled him to support the family when she had a second round  
8 of seizures that have left her brain damaged and permanently in  
9 a rehab hospital.

10 Her grandmother -- or his grandmother has visited his  
11 mother at the rehab facility in Mechanicsburg and corroborates  
12 that she cannot speak, that they actually can get her dressed  
13 and sit her up in her chair, and she's not sure whether her  
14 daughter recognizes her or not.

15 At age 19, he was responsible for making decisions  
16 that would save his mother's life and for supporting a family  
17 of five. He was working 60-plus hours a week seven days a  
18 week, working two jobs, one at Amazon and one in the evenings  
19 and weekends at the Motel 6. And he still was trying to handle  
20 some coursework from school at home, which ultimately had to be  
21 abandoned.

22 Will had assumed more responsibility than most young  
23 people from a very young age. He was accustomed to working  
24 hard to make his family situation as good as possible. He  
25 didn't have much practice in asking for help. He told me that

1 his father encouraged him to take advantage of public  
2 assistance, but that he had seen his father irresponsibly use  
3 the system and he didn't want to be like that.

4 It was during this time that Will couldn't handle  
5 stress well, and I'm not sure how much it coincides with the  
6 videos that we have seen or were shown today, but I know that  
7 it led to a chain of bad decisions. He seemed, when writing to  
8 me about it, confused about how it really did actually all  
9 happen, and he was either not able or possibly too embarrassed  
10 to explain it clearly to me.

11 From the things he wrote me, it seemed obvious that he  
12 was trying to please the older men with whom he communicated on  
13 the Internet and was not particularly interested in child  
14 pornography for its own sake.

15 When I started writing to Will, he hadn't heard from  
16 anyone in his family since his arrest. It was obvious to me  
17 that what mattered to him more than anything else was to get  
18 news of his mother's condition and to know whether his  
19 grandmother and siblings were all right.

20 I know Will as a caring young man. I now understand  
21 that he endured many hardships and, as a result, had developed  
22 coping mechanisms that are hard to understand through the  
23 average person's eyes.

24 But through it all, he kept trying to bounce back. He  
25 liked to be active, and he liked to help others. He was

1 polite, kind, and considerate when he wasn't dealing with  
2 depression or having a hard time living up to his own  
3 expectations. He is resilient and much of the time is hopeful  
4 of making a better life for himself.

5           During the 20 months that we have been corresponding,  
6 he has sent me letters of gratitude and well wishes on Mother's  
7 Day and on my birthday, a day that usually fell right after the  
8 choir's spring concerts, something the choir students had a  
9 long tradition of singing to me and giving me cards.

10           I have also received letters from him that reflect  
11 hopelessness and depression when he has felt abandoned by the  
12 many people he tried to help over the years or when his public  
13 defenders were so overloaded that he couldn't communicate with  
14 them regularly and wasn't sure he would be adequately  
15 represented.

16           Will has always been an achiever. Even in prison,  
17 Will has sought to improve himself. He reads frequently and  
18 writes daily. He started writing a novel for an inmate writing  
19 contest. He has been very pleased when he has been approved to  
20 hold a job, and he says that he tries to exercise whenever his  
21 job permits.

22           I send him music theory exercises when I write to him,  
23 which he looks forward to receiving. He doesn't tolerate  
24 sitting around and doing nothing very well. He is a creative  
25 person and unfortunately found about the worst possible vehicle

1 for demonstrating his creativity.

2 Will recently wrote me that he had summoned up the  
3 courage to request a test for HIV. He said that he had not  
4 known that Ira Task was HIV-positive until after he was  
5 arrested. He was very relieved to discover that his test came  
6 out negative.

7 I do not believe that Will is a danger to society. I  
8 am deeply saddened that he hid his history of being abused so  
9 well. Because his father was so seldom mentioned and because  
10 Will is such a big guy, it never occurred to those of us in a  
11 position to report abuse that he was a victim. Had his history  
12 been known, he could have received the help that he needed that  
13 would have prevented this horrible situation.

14 I hope that justice and mercy can combine in  
15 determining this young man's future and that Will can receive  
16 help and support. He has so much potential for good. I know  
17 that he is not blameless, but I also know that he was  
18 influenced by older adults who were manipulating a curious and  
19 susceptible young person who had few adults that showed an  
20 interest in him and whom he could trust.

21 I'll end with two quotes from one of his letters in  
22 which he was ruminating on all the factors in his life that led  
23 him to this point.

24 First, "It's all too much pressure, and with all the  
25 secrets in my house, no one can help me put together the

1 pieces." And from the same letter, "I'm going to be fine,  
2 that's what I want everyone to know, whether they helped me or  
3 not, talked to me or not, like me or not, I'm going to be all  
4 right, so don't you worry about that. Things will work out one  
5 way or another."

6 Thank you for the opportunity to speak on Will's  
7 behalf. I know that there are others who could affirm some of  
8 the things that I have mentioned but are fearful of the  
9 repercussions of being involved with a case of this nature.  
10 Thank you.

11 *THE COURT:* Thank you.

12 *MS. FREESE:* Next, Your Honor, is Robin Bell.

13 *MS. BELL:* I'm Robin Bell, R-o-b-i-n B-e-l-l. I have  
14 known William Chandler Byers Augusta since his birth. I refer  
15 to him as Chandler. His mother Kendra and I were best friends  
16 growing up. We were in the same Girl Scout troop, and we  
17 remained friends all throughout school and college. She is the  
18 godmother to my daughter.

19 I also met Kenny Hunter when I was home from college  
20 on a winter break and briefly had a relationship with him, but  
21 he proved to be unstable, so it was short-lived.

22 At an early age, I could tell Chandler was gifted. I  
23 recall a Christmas when he was about three or four, he received  
24 some type of interactive map, and days later he was able to  
25 name all of the states and their capitals. He was a quick

1 learner as a toddler, and all throughout his school career he  
2 excelled. He is also a very talented actor and vocalist.

3 It is my belief that things were not always as they  
4 appeared in the household. It always appeared that things were  
5 fine, but that was not always the case. For appearance sake,  
6 Chandler was always well dressed. He had the best of  
7 everything, clothes, shoes, toys, and electronics. He probably  
8 had every material thing that any child could ever want or  
9 need.

10 I do believe that the family was what would probably  
11 be called dysfunctional. I am aware of mental and physical  
12 abuse that went on in the household. Kendra did not freely  
13 admit to some of the abuse, but I was aware of it. Kendra was  
14 always yelling, whether it be at the kids or her parents. I  
15 don't want to paint a bad picture of her since she is unable to  
16 defend herself.

17 I do know that her yelling was most likely a learned  
18 behavior. Growing up, her father did a great deal of yelling  
19 at her and her mother for no apparent reason or not one that I  
20 could see. My experience as a parent, I find myself mirroring  
21 my mother.

22 I also remember on occasions I would talk to Kenny  
23 Hunter on the phone during college, and his mother also was  
24 yelling in the background expletives and calling them names and  
25 the like. So neither one of them -- you know, this was learned



1 behavior from both of them.

2 I also do know that Kendra did not have the  
3 picture-perfect marriage. I often worried about her safety and  
4 advised her to leave on numerous occasions. I had known of  
5 abuse before they were married. On a trip on New Year's Eve, I  
6 had a glimpse of what it was as we were traveling down I-495 to  
7 D.C.

8 Kenny kept hitting on Kendra from the backseat and at  
9 some point had snapped off one or more of her false  
10 fingernails. I then told her to pull over and for him to get  
11 out. I explained that I was not going to put up with this and  
12 that we could easily be killed in an accident on this busy  
13 highway.

14 The abuse continued after they were married. There  
15 were several times when she would have me come to the house  
16 after an incident, but she really never talked about what had  
17 actually happened. Several times Kenny would take her vehicle  
18 and claim that he was never bringing it back.

19 At one point Kenny had won a great deal of money in a  
20 lottery, but instead of taking care of his family, he went and  
21 bought a Maserati. I recall on two occasions when I witnessed  
22 Kendra beating Chandler. On both of these occasions, I had to  
23 tell her to stop. This was not what I would describe as  
24 discipline.

25 The first was in the living room, and she had him

1 pinned on the floor, and she was beating him, and I had yelled  
2 for her to stop. The second, she had chased him up a hill and  
3 was beating him, and I could hear Chandler yelling and  
4 screaming and crying, and I had to yell for her to stop at that  
5 time.

6 I refused to let my daughter go anywhere with Kendra  
7 after a specific incident that happened at a local park when  
8 she was about three years old. When Kendra brought my daughter  
9 back home, I noticed that she was acting a little differently,  
10 and I asked what was wrong with her. She seemed to get very  
11 upset and proceeded to tell me that Uncle Kenny came to the  
12 park and was yelling and grabbing and pushing Aunt Kendra.

13 I immediately called Kendra on the phone and asked her  
14 about what went on, and she confirmed what my daughter said was  
15 true. I was very upset that my daughter had to witness  
16 something of this nature, but also it further angered me that  
17 Kendra did not bring it to my attention, she let my daughter  
18 come tell me. She just dropped my daughter off like nothing  
19 had happened. She had a way of acting like nothing happened or  
20 nothing was ever wrong.

21 I would say that when her family started to grow, that  
22 we hung out less and less. I don't ever recall going on any  
23 trips with her and all three children. I believe after her  
24 daughter was born, we were together less and less. We still  
25 talked on the phone, but we did not see each other as often.

1 I can honestly say by the time that XXXXX was born, we  
2 were only interacting through phone conversations. I never was  
3 around the youngest two as infants, and I was not -- even not  
4 aware that she was pregnant until she had the baby.

5 I do know that Chandler always appeared to be  
6 withdrawn and quiet, never made much eye contact. After he  
7 grew in size, it always appeared through his mannerisms that he  
8 made himself seem small as if he wanted to be unseen.

9 I can't remember any loving family moments as a  
10 family, no hugs, kisses, or such. His father Kenny never  
11 seemed to treat him in a loving manner. He treated him very  
12 differently than the other children.

13 Around 2007, Kendra and I had a falling out and we  
14 were no longer associated with each other. I only saw Kendra  
15 once in 2008, and that was while I was hospitalized after  
16 suffering an aneurysm. After that, we had little to no  
17 contact.

18 I had visited her when she fell ill and was in a coma.  
19 She then got better and came home, and we FaceBook messaged a  
20 few times regarding my daughter, and after she fell ill again.  
21 Thank you.

22 *THE COURT:* Thank you.

23 *MS. FREESE:* And lastly, and I'll try and pronounce  
24 her name correctly, lastly, Your Honor, is Nichelle Chivis.

25 *MS. CHIVIS:* Good evening. My name is Nichelle N,

1 like Nancy, i-c-h-e-l-l-e, Chivis, C-h-i-v, as in victory, i-s.

2 Before I begin my remarks, I want to say and put on  
3 the record that Mrs. Parsons, Ms. Bell and I, we did not  
4 corroborate our statements in any way, shape, or form. And I'm  
5 saying that because I'm going last, and you're going to hear  
6 some -- you're going to see some similarities. And I just met  
7 Mrs. Parsons today. And I know Ms. Bell, but we don't see each  
8 other often at all.

9 I'm the godmother of Mr. Byers Augusta Hunter. I was  
10 there when he was born. In fact, I saw him before his mother  
11 did. Mr. Byers Augusta Hunter has been forced to endure  
12 endless stressful circumstances since his conception. I'm a  
13 firm believer that if a pregnant woman is under tremendous  
14 stress, that stress is transferred and felt by the unborn baby.

15 When Mr. Byers Augusta Hunter was born, he did not  
16 cry. His muscles were so tight that there was some speculation  
17 that he may have some dystrophy. As it turned out, he was  
18 fine. He did not cry a lot as a baby, and as he got older,  
19 when he would cry, he would often scream with his mouth shut.  
20 I always thought that this was odd and attributed it again to  
21 the stress his mother was under while she was pregnant and as a  
22 new mother.

23 Mr. Byers Augusta Hunter was loved very much by his  
24 mother, grandparents, myself, and the extended family. There  
25 was some disagreement about his paternity, hence the hyphenated

1 names, but ultimately it was determined that Kenneth Hunter,  
2 Senior, not Ruben Augusta, is his father.

3 Determining paternity was a long and stressful  
4 process. Mr. Byers Augusta Hunter was an unfortunate victim  
5 and witness to some of the situations that the adults in his  
6 life created. I never witnessed his father being affectionate  
7 with him. At best, he tolerated him.

8 In my statement, I didn't know if it was going to be  
9 submitted or read, but I do have a picture, a family picture  
10 attached to it. And in this picture, you can see that  
11 Mr. Byers Augusta Hunter was set apart from his parents and  
12 siblings. His parents are each touching a child, but neither  
13 of them is touching him. This is indicative of how I perceived  
14 his family there, present in the home but not engaged. It is  
15 just heartbreaking.

16 Mr. Byers Augusta Hunter has always learned things  
17 quickly. When he applied himself, he was a top-notch student.  
18 He was somewhat reticent, but I thought that was just because  
19 of some of the instability he experienced at home. His mother  
20 was a very ambitious woman before her health failed. She was  
21 always trying to advance herself professionally and provide for  
22 her family. Changing jobs every few years and changing the  
23 schools that Mr. Byers Augusta Hunter attended may have added  
24 to the stress at the time.

25 To my knowledge, Mr. Byers Augusta had a stint in a

1 mental hospital when he was in elementary school. He may have  
2 had another inpatient stay the following year. Although  
3 children do not come into this world with an instruction manual  
4 and parents make mistakes, his circumstances, in my opinion,  
5 were extremely unusual.

6           There was domestic violence in the home. He may have  
7 seen and definitely heard his mother's cries. His mother told  
8 me of one occasion his father punched him in the chest to wake  
9 him up. There may have been other occasions where Mr. Byers  
10 Augusta was abused, but I did not witness them, nor was I made  
11 aware of them.

12           Mr. Byers Augusta Hunter's status changed from being  
13 an only child to gaining a brother and a sister ten months  
14 apart in the same calendar year. A few years later he gained  
15 another brother. A lot of responsibility was placed on  
16 Mr. Byers Augusta Hunter as he got older and his mother's  
17 health began to deteriorate.

18           He did not have a stable and consistent male role  
19 model in his life after his grandfather passed away. His  
20 mother employed the flight response when faced with the fight  
21 or flight paradigm.

22           She would call the Carlisle Police Department to come  
23 calm Mr. Byers Augusta or talk to him after he and his mother  
24 would argue about something during his teen years. He was on  
25 juvenile probation and had to attend some sort of court-ordered

1 camp on weekends for a while. He was medicated unnecessarily.

2 I remember his mother telling me that the doctors were  
3 evaluating him for Asperger syndrome. I do not know what, if  
4 anything, ever came from that. Had a different parenting style  
5 been employed, I wholly believe that Mr. Byers Augusta Hunter  
6 would not be in this predicament today.

7 I noticed a lot of anger in Mr. Byers Augusta at a  
8 young age. It was very hard to get information out of him. He  
9 witnessed the differences that were made between him and his  
10 siblings. His father showed affection to his siblings but not  
11 him.

12 His mother did not have him circumcised, but his  
13 younger brothers were. That may seem like an insignificant  
14 difference, but it is a difference that was known, seen, and  
15 felt by him for a very long time. Kids do not like to be  
16 different, and he was made to look and feel different.

17 His mother did the very best that she could in most  
18 cases but failed as a parent in other cases. For example, she  
19 told me for years that she had Mr. Byers Augusta's name legally  
20 corrected. He has gone by the surname of Hunter for many  
21 years. His high school diploma, admission to college, et  
22 cetera, are all under the name of William Chandler Hunter.  
23 Apparently she was not truthful with me, because Mr. Byers  
24 Augusta, not Mr. Hunter, is incarcerated.

25 Any investigation of Mr. Byers Hunter is incomplete

1 unless all known aliases are considered: William Byers;  
2 William Byers, hyphen, Augusta; William Byers Augusta; William  
3 Hunter; Chandler Byers; Chandler Byers, hyphen, Augusta;  
4 Chandler Byers Augusta; Chandler Hunter; W.C. Byers, hyphen,  
5 Augusta. You see where I'm going with this. Please don't  
6 leave any stone unturned. There is something in his past that  
7 has significantly contributed to him being incarcerated today.

8 Mr. Byers Augusta tends to withdraw and withhold  
9 information. Sometimes he makes very serious statements in a  
10 matter-of-fact manner. When prodded, he will share the  
11 information that you need. I have never known him to tell  
12 falsehoods. He is not being disrespectful or arrogant, it is  
13 just how he's accustomed to speaking.

14 It may appear that he has a lack of remorse, but that  
15 is not true, either. He has been downtrodden for so long that  
16 he does not possess the ability to share his true feelings  
17 about situations immediately. All of these factors, including  
18 his background, lead me to believe that he is not a bad young  
19 man, but a very sick and confused young man.

20 I do not believe that he belongs in jail or prison. I  
21 know that he needs help and may only receive that help in the  
22 forensic unit of a psychiatric hospital. As much as I would  
23 like to believe that correctional institutions are designed to  
24 help inmates become productive members of society upon their  
25 release, I understand that reduced staffing and day-to-day



1 costs don't support that ideology. It is far more economical  
2 to simply lock up our young men and throw away the key.

3 Please do not do that to Mr. Byers Augusta Hunter. He  
4 needs help. He needs help to find that little boy inside of  
5 him that had his childhood abruptly canceled through no fault  
6 of his own. He needs to be taught to comprehend exactly what  
7 has transpired.

8 Don't be fooled by the man you see here. He is very  
9 much a man-child. There was obviously a disconnection  
10 somewhere in his past that led to the behavior and actions that  
11 he is alleged to have committed. Please invest your resources  
12 into uncovering, identifying, and correcting whatever it is  
13 that led to the alternative reality that engulfs him like a  
14 poisonous bubble.

15 I am afraid that he will be killed in prison, quite  
16 honestly. Please do whatever you can to get him placed in the  
17 forensic unit of a mental hospital.

18 I love Mr. William Chandler Byers Augusta Hunter very  
19 much. I do not agree with the crimes he has committed at all,  
20 but love you don't just turn off and on because someone does  
21 something that you disagree with. I love him.

22 He has pled guilty to a horrific crime, and he must  
23 pay his debt to society. I am pleading for leniency and  
24 redemption for him. Please do not let his journey end in  
25 prison. He is a talented young man that could offer a lot to

1 society. He is academically gifted and possesses a beautiful  
2 singing voice.

3 He's also a sick young man that needs help. His  
4 parents failed him in many ways, and that is a big part of why  
5 we are here today. Please do not compound this devastating  
6 tragedy by failing to get Mr. Byers Augusta Hunter the help  
7 that he needs. And I thank you for your time.

8 *THE COURT:* Thank you.

9 *MS. FREESE:* Your Honor, that concludes all of the  
10 individuals who wished to speak on my client's behalf. I do  
11 have some conclusory remarks.

12 *THE COURT:* All right. We did not make part of the  
13 record the calculations of the probation office. We should do  
14 that now. Everyone understands we begin with an offense level  
15 43, criminal history category one, making for a guideline range  
16 of life.

17 I've received the sentencing memos of both counsel,  
18 and I know that there was one objection that counsel had made  
19 part of the record that we should address at this point.

20 *MS. FREESE:* And, Your Honor, you're, I believe,  
21 referencing my request to have a certain portion of the  
22 presentence report removed.

23 *THE COURT:* Yes.

24 *MS. FREESE:* That is correct, Your Honor, as I  
25 indicated in my objections, and I rest mostly on that.

1 Although we know that BOP policy requires that the presentence  
2 investigation report not be disclosed, we also know the  
3 reality. I certainly firsthand know the reality that these  
4 documents circulate throughout the prison.

5 I have grave concerns, which actually have been  
6 somewhat validated already by a couple of things that have  
7 transpired over the last 48 hours at SCI Camp Hill. My concern  
8 is that he is already vulnerable in prison, and I am afraid  
9 that he could be killed and that some of the information places  
10 him in grave danger.

11 We understand that the court must consider it as part  
12 of its 3553(a) analysis, but what I've specifically requested  
13 be removed was the detailed chat logs that were recited in the  
14 presentence report, on Pages 10 through 14 of the presentence.

15 So based upon that, I ask that it be redacted or  
16 removed from the report, fully recognizing that Your Honor, it  
17 is appropriate for consideration.

18 *THE COURT:* All right. Mr. Berry, do you have a  
19 position on this?

20 *MR. BERRY:* Your Honor, our position is that it is  
21 part of the offense conduct. It is the nature and  
22 circumstances. It was appropriately included in the PSR, and  
23 the concerns about his danger can be addressed. The marshals  
24 have the ability to address that, BOP has the ability to  
25 address that.

1           And excising portions of the PSR that, you know, will  
2       come back many years later to assess what was his original  
3       offense, sometimes that's all we have to look at. And I don't  
4       think it's appropriate to be pulling those sorts of things out  
5       just because they're particularly heinous and disturbing, so we  
6       would ask that it remain in the PSR.

7           *THE COURT:* Is there any reason why the probation  
8       office could not include the chat logs as an addendum to the  
9       presentence report, in other words, an attachment?

10          *MR. BERRY:* I don't have any problem with that. I  
11       just don't like the idea of picking and choosing our facts.

12          *THE COURT:* Okay. I'm going to ask that it be  
13       rewritten to be made an attachment to the presentence report.  
14       And obviously I, unfortunately, have had the opportunity to  
15       read the chat logs many times over, so I certainly will  
16       consider them and they can be made part of the assignment.  
17       Okay?

18          *MS. FREESE:* Thank you, Your Honor. Thank you.

19          *THE COURT:* All right. Anything else you want to  
20       offer on your client's behalf?

21          *MS. FREESE:* Yes, Your Honor, I do have some  
22       conclusory remarks.

23               Well, it's been a long and very difficult day, and,  
24       unfortunately, the court has the most difficult task of  
25       sentencing Mr. Augusta for horrendous crimes. I've reviewed

1 the government's sentencing memorandum many times, and to the  
2 extent that they summarize that these crimes would shock the  
3 conscience and that it may be the most difficult and worst case  
4 that the district has ever seen, I would agree.

5 The government clearly, in its 41 pages, Your Honor,  
6 wants you to see a monster, someone who is not a human being,  
7 and for that reason, they seek a life sentence for crimes that  
8 my client committed, by their own admission within the  
9 sentencing memo, when he himself was a child.

10 It's undisputed that this conduct occurred, as is  
11 cited in the government's own memo, between 2013 and 2015. It  
12 is no coincidence that the indictment in this case cuts off at  
13 my client's 18th birthday. It is the relevant conduct that is  
14 cited throughout the government's memo that the court has heard  
15 so much about that actually occurred when my client was 15, 16,  
16 17, and 18.

17 And I'm not asking you, Your Honor, to jump to this  
18 conclusion that he was a kid or a juvenile. The Supreme Court  
19 has specifically spoken on how juvenile offenders are to be  
20 viewed differently.

21 Now, the government, of course, and understandably in  
22 its interests to advocate, maybe not explicitly but wants the  
23 court to basically ignore my client's age as a factor. In the  
24 41 pages, while there's one reference to another case where a  
25 client was -- or where, excuse me, the defendant was 21 years

1 of age, there's really very little reference or focus and  
2 there's no response to the defense arguments as to our Supreme  
3 Court's rulings in the juvenile life without parole cases.

4 But, Your Honor, this case is different. My client is  
5 a human being. And the 3553(a) analysis requires the court not  
6 just to look at the nature and circumstances of the offense.  
7 And, yes, they are appalling. My client, by his own admission,  
8 fully admits to what he's done. He did so by signing a 25-page  
9 admission, something that I, as counsel, have never  
10 experienced, signed a 25-page admission that was filed with  
11 this court.

12 Other than his initial request for counsel at the time  
13 that he was arrested, he's always admitted fully and completely  
14 what he's done and the horrific acts that he's committed. But  
15 that's one factor. That's not the totality of this court's  
16 consideration, because the court must also consider the  
17 additional history and characteristics of the defendant, which  
18 were really, in large part, unaddressed by the government.

19 His youth at the commission of this crime truly sets  
20 him apart, not just from his co-defendants, but from the vast  
21 majority of sex offenders in this country. And from the cases  
22 I could go through in the government's 41-page memorandum, I  
23 pulled out their ages. These other offenders, they're in their  
24 40s, their late 30s, their 50s, their 60s. They're not 18, 17,  
25 16.

1           My client might be 21 today, but this conduct occurred  
2 many years ago, several years ago. As he reports in several --  
3 to several places and which I would argue to the court has been  
4 substantiated, he became involved in sexualized chat rooms at  
5 or about the age of 12 or 13. The conduct or the subject of  
6 this offense occurred just a few years later.

7           Juveniles, Your Honor, are different. They're  
8 different because of status of their brain development and the  
9 ability for rehabilitation. And, again, I don't ask you to  
10 assume that fact. The United States Supreme Court tells you  
11 that. Juvenile lifers cannot -- this is a direct quote from  
12 Graham v. Florida -- cannot, with reliability, be classified  
13 among the worst offenders.

14           So while the government calls Mr. Augusta the worst of  
15 the worst and while the conduct is unbelievable and shocking,  
16 the Supreme Court tells us something different. Juveniles are  
17 not mature. They have an underdeveloped sense of  
18 responsibility, and they're more vulnerable and susceptible to  
19 negative influences than adults.

20           I'd ask you to go back further. What type of life did  
21 Chandler, William, whatever he was known to certain people,  
22 have? He had a life of chaos and tumult going back to his  
23 mother's conception. His home was a house of horrors.

24           There was a question of paternity. His mom was a  
25 liar, a secretive woman. His father beat his mother. His

1 mother and father beat him. He was punched like a man. He was  
2 deprived at times of food, and at other times he was forced to  
3 eat food and then his own vomit.

4 It wasn't just physical abuse. It was unthinkable  
5 emotional abuse. He was mocked. When Will was trying to  
6 figure out his sexuality, homosexuality, he was ridiculed. His  
7 dad called him a faggot and a shithead and told him to go put  
8 his mom's dress on. He was degraded, he was demeaned, he was  
9 isolated.

10 He tried to find friends, as his teacher and as some  
11 other people in his life told you, but frankly, he had  
12 virtually none. He sought acceptance, and he sought it in all  
13 of the wrong places, in unthinkable ways, and certainly with  
14 all of the wrong people. Your Honor, he tried to hang himself  
15 when he was eight years of age and was committed to a  
16 psychiatric institute less than two years later.

17 The government somehow questions this abuse, these  
18 horrors, and spends much of its time today and in its  
19 sentencing memorandum indicating that perhaps my client  
20 fabricated this for mitigation purposes.

21 There's argument that Dr. Krueger's conclusions are  
22 based exclusively on self-reports of Mr. Augusta that he was  
23 sexually abused, and yet Dr. Krueger told us that he denied  
24 being sexually abused. He acknowledged the behavior,  
25 acknowledged what he had done and his conversations, what he



1 had done with older men, men that were decades older, but he  
2 didn't characterize this as abuse.

3 It is simply untrue that many of these claims and  
4 these personal characteristics are not corroborated. You've  
5 heard from a number of sources and we know through school  
6 reports, psychiatric and psychological reports, of past suicide  
7 attempts and friends and family that these things happened.  
8 They're documented throughout his life. They're not convenient  
9 or motivated by an energetic defense attorney.

10 In his teen years, he sought acceptance in sexualized  
11 chat rooms, starting out at about age 12. He was groomed by  
12 pedophiles. He was cyber-sexually abused. Grown men egged him  
13 on, groomed him when he was a child himself. There's a  
14 significant point here, and it's a delicate one, but it's a  
15 significant point.

16 The investigation, the forensic evidence recovered by  
17 the government in this case, the indictment, never captures the  
18 fact that my client was a juvenile that was preyed upon and  
19 abused by other older men. Why do I say that? Because, of  
20 course, it's the government's discretion who they prosecute and  
21 who they don't, but no one has really talked about that fact.

22 When my client -- and this is undisputed because the  
23 forensic evidence bears it out. We see cases in this district  
24 all the time where the government says the victim is 15, 16,  
25 this is a child. Well, we know from the forensic evidence that

1 my client was also that same child, and he was having sex,  
2 talking with, whether it was cyber or live, with 40-, 50-,  
3 60-year-old men. That conduct goes unmentioned. And it is, I  
4 would argue, significant.

5           There is a need here to promote just punishment,  
6 afford adequate deterrence, and promote respect for the law. I  
7 couldn't agree more with the government that the punishment  
8 should fit the crime, but less than a life sentence for what  
9 I'm going to characterize as a juvenile, meaning an individual  
10 under 25 years old, with a still-developing brain, can  
11 accomplish that.

12           For someone who commits even the most heinous crime,  
13 in this case, Mr. Augusta, a sentence of less than life is  
14 sufficient but not greater than necessary, and the court must  
15 consider the need here for total punishment.

16           Now, the government cites in its memorandum the case  
17 of United States v. Goff and urges this court not to impose a  
18 sentence, quote, too lenient. Well, in Goff, Your Honor, the  
19 court imposed a four-month sentence for possession of child  
20 pornography. And I would submit that that is entirely  
21 unhelpful to the court and not remotely similar to the nature  
22 of the crime here.

23           Not once in this memorandum -- and it is a 3553(a)  
24 factor that this court consider total punishment. Mr. Augusta  
25 is serving the equivalent of a life sentence that was imposed

1 by a separate sovereign. He is serving, in state prison, a  
2 sentence of 45 to 90 years. If he is paroled at his minimum,  
3 which is the greatest of greatest leaps in this case, he would  
4 be roughly 65 years of age.

5 If Pennsylvania at the time, depending upon the  
6 politics, the governor, actually would follow the Truth In  
7 Sentencing Act policy and provisions, well, then Mr. Augusta  
8 would be roughly 96 years of age when he's released from  
9 custody on his state sentence. Mr. Augusta will surely serve  
10 past his minimum for these violent sex crimes. And this is a  
11 factor, Your Honor, that the court should, and I would argue  
12 must, consider.

13 With respect to the unwarranted sentencing  
14 disparities, if there's one thing that frankly I've always  
15 thought, but when I look through all of the cases cited by the  
16 government and all of the cases that our office has certainly  
17 experienced, what we know is this:

18 Each case requires an individualized analysis of the  
19 person who committed the crimes, of the 3553(a) factors. Like  
20 Mr. Berry and Ms. Taylor could go through and cite ten cases or  
21 maybe even a hundred where a life sentence was imposed for a  
22 heinous crime, I could come up with a hundred more where there  
23 was a significant variance because of an individualized factor.  
24 That is the challenge, frankly, with these types of cases.

25 In the cases, however -- and I did make every effort

1 to look up many of them. I pulled dockets and spent hours on  
2 PACER pulling up documents from all over the country because I  
3 was interested in one thing: When the court conducted the  
4 individualized assessment in any of these cases, were the  
5 individuals 16, 17, 18, when they committed the crimes, were  
6 they 20, 21, 22. And the overwhelming majority of the cases I  
7 was actually able to pull within 24 hours tell me that, no, the  
8 individualized assessment, one of the characteristics there,  
9 these defendants were 40, 45, 50. They were two to three times  
10 my client's age at the time that they committed the offenses,  
11 and that, Your Honor, is extremely relevant.

12 Even the co-defendants in this case, there is one  
13 co-defendant who is very close in age, and that's Matthew  
14 Fensler. And he was -- I believe my spreadsheet reveals he's  
15 25 years of age based on his date of birth. He is the only  
16 defendant, even though there's still an age gap, that is  
17 similarly situated age-wise.

18 You heard from Dr. Krueger. And obviously, as to be  
19 expected, he's been rigorously cross-examined. I would argue  
20 to Your Honor, though, that he is credible. He's Harvard  
21 educated. He's the medical director of the Sexual Behavior  
22 Clinic, works for the New York Psychiatric Institute, travels  
23 the world, educates, and he's been conducting, over the course  
24 of his career, really thousands of assessments.

25 And his professional opinion is that my client's

1 attitude towards treatment is positive, that he's bright -- and  
2 that's been corroborated through a number of different  
3 sources -- he's cooperated, he's motivated, and that he's an  
4 excellent candidate for therapy.

5 We recognize, and I think this needs to be mentioned,  
6 Your Honor, that there's an emphasis and I would expect an  
7 argument to be made that Dr. Krueger is completely incredible  
8 based upon his opinion, which frankly I give him credit for,  
9 that William could be treated in society. He wasn't asked to  
10 provide any opinion with respect to society's interest on  
11 punishment. Obviously there's a separate interest there. He's  
12 a sex offender counselor, and that was the nature of his  
13 evaluation. He was looking at him for purposes of treatment.

14 He is vulnerable in prison, and it's worth mentioning  
15 to the court that his trip to SCI Camp Hill has been absolute  
16 hell. He is in the special housing unit now after being  
17 harassed over loudspeakers, not just by correctional officers  
18 but by other inmates. His cellmate was afraid that he was  
19 going to be murdered because Will was absolutely viral during  
20 this transport for the sentencing proceeding.

21 So this fear that my client has or this concern or  
22 opinion that Dr. Krueger has appears to already be manifesting  
23 itself. He didn't particularly have problems at Cumberland  
24 County Prison, but as we've discussed, a state prison is a  
25 whole different can of worms.

1           He will be -- his home jail, so to speak, is SCI  
2 Forest, but the transport that he's experienced here and the  
3 circumstances when I saw him in the special housing unit have  
4 truly been frightening. He checked himself into the special  
5 housing unit when another inmate came up to him and said, you  
6 could be killed tonight or you check yourself in. And Will  
7 wasn't sure what he wanted to do but ultimately decided to  
8 check himself in.

9           He's troubled, Your Honor. He's sick, and he needs  
10 treatment. He has multiple mental health diagnoses, multiple  
11 sexual disorders, and, as we know, a still-developing brain.  
12 For all of these reasons, Your Honor, we ask you to impose a  
13 sentence of a term of years, not to impose a life sentence on  
14 Mr. Augusta.

15           I do believe, Your Honor, that this case is remarkable  
16 in several ways, and I can't, as his counsel, really honestly  
17 agree more with the government in its characterization of the  
18 conduct here. It is absolutely shocking. But we are asking  
19 Your Honor to consider that term of years because we believe  
20 that it is sufficient but not greater than necessary.

21           As the presentence report sets forth, such a sentence  
22 under Chapter 5 of the guideline range shall run concurrently  
23 because he is incarcerated for wholly related conduct. We ask  
24 for that concurrent sentence, to the extent that it doesn't  
25 exceed the state sentence, to -- that the court order that it

1 be served in a state correctional institution, as the state  
2 does have primary custody.

3 Finally, Your Honor, really, and in summary to what  
4 these other witnesses, the few people that my client does have,  
5 whom I commend for coming today, I would say this: He's still  
6 a human being. He's a young man who committed heinous, heinous  
7 acts, but he's a person.

8 And the Third Circuit, in a case that was published in  
9 2009, which I cited in my memo, Olhovsky, indicated that the  
10 court cannot be so appalled by the offense that it loses sight  
11 of the offender. And we're asking Your Honor to do just that,  
12 to not be so appalled by this heinous crime and the offense  
13 that it loses sight of the human being, William Augusta. Thank  
14 you.

15 *THE COURT:* Thank you. Ms. Freese, is Marienville the  
16 proper correctional facility? Is that where it is?

17 *MS. FREESE:* It is in Marienville.

18 *THE COURT:* In Marienville.

19 *MS. FREESE:* So it's actually the State Correctional  
20 Institution at Forest, is the name of the --

21 *THE COURT:* At Forest?

22 *MS. FREESE:* Yes. And that's where he's currently  
23 designated.

24 *THE COURT:* All right. And you mentioned Mr. Fensler.  
25 Do you recall what his sentence was?

1           *MS. FREESE:* Your Honor, I do have it right here. I  
2 believe that it was either 35 or 40 years, but I do have that  
3 information.

4           *THE COURT:* Four twenty I am told. I had a chart of  
5 every single defendant in this case, and I knew what counts  
6 they pled to and were charged with. Some were charged with 10  
7 and 13, and I don't remember where --

8           *MS. FREESE:* I do have, and this was, of course,  
9 prepared by our report -- excuse me, by our office, that he  
10 received a sentence of 420 months.

11           *THE COURT:* And do you have which counts he pled to?

12           *MS. FREESE:* I do. It may be easier if I hand it up  
13 to the court.

14           *THE COURT:* Okay. Ten and thirteen was my  
15 recollection, but if I could just double-check that. All  
16 right. This confirms my recollection that the highest sentence  
17 was 480 months to date, and that was Casey O'Dell.

18           *MS. TAYLOR:* That's correct, Your Honor.

19           *THE COURT:* Okay. Does your client wish to speak?

20           *MS. FREESE:* Yes, Your Honor.

21           *THE COURT:* All right.

22           *THE DEFENDANT:* Never in a billion years did I think  
23 I'd be standing in front of a judge for crimes I committed,  
24 especially not when they involved hurting my family and the  
25 people that I love most.



1 I know that those people aren't here today. I'm not  
2 sure if they'll be able to read any transcripts for this or  
3 ever get this message, but I would still like to speak to them,  
4 if I may.

5 To XXXXX, I want him to know that none of this was  
6 ever his fault. He didn't deserve any of this. I am so sorry.  
7 There's no excuse for anything that happened. I was wrong, and  
8 there isn't a day that goes by that I don't wish that I could  
9 take back the hurt and the pain and the damage that I caused  
10 him. And I just hope that he'll be able to grow up and still  
11 have hope for his future.

12 To my goddaughter, I know you're too young to  
13 understand what happened. I just, I hope that you can still  
14 grow into being a strong, independent young woman who will make  
15 your mother proud, and I know that you will.

16 To her mother, I betrayed a friendship and a level of  
17 trust that I know is going to be hard to forgive, but I hope  
18 that one day she'll be able to forgive me at some point.

19 To my other brother and sister, XXXXX and XXXXX, I'm  
20 sorry. I know I didn't treat them the way that they deserved  
21 to be treated all the time, and they didn't deserve any of  
22 this. I dragged them into my own stupidity, and I hope that  
23 one day they'll be able to forgive me.

24 And I also wanted to apologize to my parents. I mean,  
25 I'm sorry for the hurt and the pain and damage that I've caused

1       them throughout not just with this, but everything before this.

2               I know the things that I did have to be punished and  
3       should be. I'm just asking that you don't make me spend the  
4       rest of my life in jail, that you give me a chance, a second  
5       chance to prove that I'm not the monster and the animal who has  
6       done all these things and who all this evidence has brought  
7       before you.

8               I just -- I'm asking that you consider giving me a  
9       chance to make things right. That's all I have to say. Thank  
10      you.

11              *THE COURT:* Thank you. For the government.

12              *MR. BERRY:* Your Honor, we've heard an awful lot about  
13      the defendant, and I just want the court -- I think the court  
14      has everything it needs before it. I'm not going to belabor  
15      this point, but the one person that has not really been talked  
16      about that much is Victim 1. And I just want the court to keep  
17      that in mind as you think about this sentence.

18              And then I have one housekeeping request that maybe is  
19      more appropriate at the end of the sentencing hearing, and that  
20      is that the transcript be redacted as to the names of the  
21      siblings that Mr. Augusta just referenced on the record. I  
22      think the rest of us did as diligent a job as we could about  
23      not saying their names, and I don't fault him at all for  
24      bringing their names up. That's perfectly appropriate. I just  
25      ask that the court reporter redact those names.

1           MS. FREESE: Certainly no objection.

2           THE COURT: Okay. Counsel, I have considered the  
3 3553(a) factors, everything that I have heard from the  
4 witnesses, what counsel have said and written.

5           The balancing is, as counsel has noted, a careful one  
6 that in a case like this causes the court to have to separate  
7 from the serious and horrific offenses that bring this young  
8 man before the court and look at the person who stands before  
9 the court.

10           He's 21 years old, a high school graduate, a very  
11 smart young man who is creative and musically talented. Like a  
12 lot of people who come before the court, he comes from an  
13 absolutely chaotic home environment. He's the product of a  
14 stormy, abusive relationship.

15           He's had a little bit more guidance because he's had a  
16 grandmother, which we don't see in some of the people who come  
17 before the court. But he does have an abusive mother and a  
18 convicted felon for a father, so he didn't start from a good  
19 place.

20           He has no criminal history points in spite of that.  
21 The trouble that he managed to get himself into in his youth,  
22 unlike most of the people who come before the court, was not  
23 drug dealing or running the streets, but rather he found a  
24 place in chat rooms and quickly went to a very dark place.

25           I don't think we need to go over the events that bring

1 him before the court. He has a background of violent,  
2 assaultive behavior from a young age and a history of acting  
3 out on his pedophilic impulses and, unfortunately, victimized  
4 his own family member.

5 He's before the court for the production of  
6 pornography based on repeated violent sexual assaults against a  
7 small child, and as counsel has noted in the writings, the  
8 assault was unusually depraved, dehumanizing, heinous, and  
9 cruel.

10 I have considered the testimony of his witnesses very  
11 carefully. I note that the government has properly pointed out  
12 that a number of the factors that Dr. Krueger used in making  
13 the assessments that he did were based on the defendant's own  
14 incomplete history, and many of these assessments are quite  
15 subjective.

16 I take to heart what counsel has said and written  
17 about the youth of this offender. Much has been written and  
18 said about the developing brain and the lack of judgment that  
19 we see in people below age 18 that causes them to act in ways  
20 that sometimes we do not understand.

21 No matter what age this defendant is, I just find the  
22 conduct in this case incomprehensible, as I know everyone here  
23 does. It's particularly aggravated by the fact that adult men  
24 were made a party to this conduct. Strangers assisted in the  
25 abuse of this little boy. Mr. Stamm, who was sentenced only a

1 couple of weeks ago and whose voice we heard on the tapes  
2 today, literally terrorizing this little boy in order to get  
3 him to submit.

4 I honestly don't know how this young man got to that  
5 place, and I don't think anybody here, including Dr. Krueger,  
6 could ever explain it to my satisfaction. It is very  
7 difficult, looking at a guideline range sentence of life, to  
8 make the determination that no sentence other than a life  
9 sentence would meet sentencing objectives. I'm not prepared to  
10 do that here today.

11 I've carefully considered the other defendants in this  
12 case, their age, their own culpability, and obviously I must  
13 look at sentencing disparity. As I have pointed out to other  
14 counsel, Mr. Augusta is at the very top of the indictment for a  
15 reason. It is his conduct that is the most serious and  
16 reprehensible in the case.

17 I note that the other defendants are older and maybe  
18 could be arguably a factor in the conduct of Mr. Augusta, but I  
19 don't believe that's been borne out by the evidence. I do not  
20 believe that Mr. Augusta was lured into this conduct by adult  
21 defendants who egged him on and that but for their  
22 encouragement, this offense would not have occurred.

23 I've read the transcripts, and I think that he acted  
24 on his own accord. I think he is wholly culpable for the harm  
25 that he's caused here. I do believe that a sentence below life

1 does satisfy sentencing objectives.

2 Pursuant to the Sentencing Reform Act of 1984, it's  
3 the judgment of the court that the defendant, William Chandler  
4 Augusta, is hereby committed to the custody of the Bureau of  
5 Prisons to be imprisoned for a term of 720 months.

6 This sentence consists of a sentence of 720 months on  
7 Count 4; 360 months on Counts 1, 2, 3, 5, 6, 7, 8, 9, 10, and  
8 13; and 240 months on Counts 11 and 12. All sentences are to  
9 run concurrently with each other.

10 The court recommends to the Bureau of Prisons that the  
11 State Correctional Institution at Forest or any other facility  
12 to which the defendant may be transferred be the place of  
13 confinement, thereby making this sentence concurrent with the  
14 sentences in Cumberland County Court under Dockets Number 2014,  
15 2015, 2934-2015 and 68-2016.

16 It's ordered that the defendant pay to the Clerk, U.S.  
17 District Court, a special assessment of \$100 on each count for  
18 a total of \$1300 due immediately.

19 I find that the defendant does not have the ability to  
20 pay a fine or additional assessment but order that he make  
21 restitution in the amount of \$81,891.95 payable to the Clerk,  
22 U.S. District Court.

23 Restitution is to be disbursed as follows: \$58,415 to  
24 Andy; \$5,000 to Pia; \$5,000 to Mya; \$5,000 to Ava; and \$8,000  
25 to Cindy. The payment of interest is waived.

1           Restitution in the amount of \$476.95 is owed to the  
2           Pennsylvania Victims Compensation Assistance Program, and it's  
3           to be paid jointly and severally with restitution imposed or  
4           that will be imposed in the cases of Casey O'Dell, Scott Lane,  
5           David Sewell, Bruce Edgecombe, Moises Marquez, William Staples,  
6           Paul Stamm, Dylan Heatherly, James Reese, Jason Bolden.

7           No further payment is required after the sum of the  
8           amounts actually paid by all defendants has fully covered the  
9           compensable losses.

10          The defendant shall forfeit to the United States his  
11          interest in certain properties described in the charging  
12          document.

13          During the term of imprisonment, the restitution is  
14          payable every three months in an amount after a telephone  
15          allowance equal to 50 percent of the funds deposited into the  
16          defendant's inmate trust fund account.

17          When the defendant is released from imprisonment, he  
18          shall be placed on supervised release for a term of life on  
19          each count to be served concurrently.

20          If he is released, the defendant shall report in  
21          person to the probation office in the district to which he is  
22          released within 72 hours of his release from the custody of the  
23          Bureau of Prisons.

24          While on supervised release, the defendant must not  
25          commit any federal, state, or local crime, possess a dangerous

1 weapon, or unlawfully possess a controlled substance.

2 The defendant shall comply with the standard  
3 conditions that have been adopted by the court and with the  
4 following additional conditions:

5 The defendant shall cooperate in the collection of  
6 DNA as directed by the probation officer.

7 The defendant must not have direct contact with any  
8 child that he knows or reasonably should know to be under the  
9 age of 18 without the permission of the probation officer.

10 If the defendant has direct contact with any child  
11 that he knows or reasonably should know to be under the age of  
12 18 without the permission of the probation officer, he must  
13 report this contact to the probation officer within 24 hours.

14 Direct contact includes written communication,  
15 in-person communication, or physical contact. Direct contact  
16 does not include incidental contact during ordinary daily  
17 activities in public places.

18 A defendant must not go to or remain at any place  
19 where he knows children under the age of 18 are likely to be,  
20 including parks, schools, playgrounds, and child care  
21 facilities.

22 The defendant must participate in a sex  
23 offender-specific assessment. The defendant must participate  
24 in an offense-specific treatment program and follow the rules  
25 and regulations of the program. The probation officer will



1 supervise participation in the program that could include an  
2 evaluation and completion of any recommended treatment.

3 The defendant must submit to periodic polygraph  
4 testing at the discretion of the probation office as a means to  
5 ensure that he is in compliance with the requirements of the  
6 supervision and treatment program.

7 The defendant must submit computers or other  
8 electronic communications or data storage devices or media to a  
9 search. He must warn any other people who use these computers  
10 or devices capable of accessing the Internet that the devices  
11 may be subject to searches pursuant to this condition.

12 The defendant must allow the probation officer to  
13 install computer monitoring software on any computer he uses.  
14 To ensure compliance with computer monitoring, the defendant  
15 must allow the probation officer to conduct initial and  
16 periodic unannounced searches of any computers subject to  
17 computer monitoring.

18 These searches shall be conducted for the purposes of  
19 determining whether the computer contains any prohibited data  
20 prior to the installation of the monitoring software, to  
21 determine whether the monitoring software is functioning  
22 effectively after its installation, and to determine whether  
23 there have been attempts to circumvent the monitoring software  
24 after its installation. The defendant must warn any other  
25 people who use these computers that the computers may be

1 subject to searches pursuant to this condition.

2 The defendant must not communicate or otherwise  
3 contact the victim either directly or through anyone else.

4 The defendant must submit his person, property, house,  
5 residence, vehicle, papers, computers, other electronic  
6 communications or data storage devices or media or office to a  
7 search conducted by the U.S. probation officer.

8 Failure to submit to a search may be grounds for  
9 revocation of release. The defendant shall warn any other  
10 occupants that the premises may be subject to searches pursuant  
11 to this condition.

12 The defendant shall apply all monies received from  
13 income tax refunds, lottery winnings, judgments, and/or other  
14 anticipated or unexpected financial gains to the outstanding  
15 court-ordered financial obligation.

16 The defendant must provide the probation officer with  
17 access to any requested financial information and authorize the  
18 release of any financial information. The probation office may  
19 share financial information with the United States Attorney's  
20 Office.

21 The defendant must not incur new credit charges or  
22 open additional lines of credit without the approval of the  
23 probation office.

24 In the event that restitution is not paid in full  
25 prior to the commencement of supervised release, the defendant

1 shall, as a condition of supervised release, satisfy the amount  
2 due in monthly installments of no less than \$50 to commence 30  
3 days after release from confinement.

4 The court finds the defendant poses a low risk of  
5 future substance abuse and therefore suspends the mandatory  
6 drug testing requirement. It's my determination that this  
7 sentence is sufficient but not greater than necessary to comply  
8 with the provisions set forth in 18, United States Code,  
9 Section 3553(a) (2) .

10 I have considered all seven factors set forth in the  
11 statute. I recognize that the guidelines, policy statements,  
12 and amendments are advisory only. I find their application  
13 reasonable and appropriate.

14 Counsel, there was not a waiver of appellate rights,  
15 was there?

16 Mr. Augusta, you do have a right to appeal your  
17 conviction if you believe that your guilty plea was somehow  
18 unlawful or involuntary or if you think there was some other  
19 fundamental defect in the proceedings that you didn't waive by  
20 entering a guilty plea.

21 You also have a statutory right to appeal your  
22 sentence under certain circumstances, particularly if you think  
23 the sentence I impose on you is contrary to law. With few  
24 exceptions, any Notice of Appeal must be filed within 14 days  
25 after sentence is imposed on you.

1           If you're not able to pay the costs of an appeal, you  
2           can ask the court for leave to appeal in forma pauperis, and if  
3           you so request, the Clerk of Court will prepare and file a  
4           Notice of Appeal on your behalf.

5           Counsel, there was something else for the record?  
6           Mr. Berry?

7           MR. BERRY: Yes, Your Honor. I've made a terrible,  
8           terrible oversight. In all the other defendants' cases, they  
9           all have plea agreements. We all have agreements about  
10          restitution.

11          THE COURT: Okay.

12          MR. BERRY: Particularly for Victim 1. So my  
13          oversight is not noticing in the PSR that there was no  
14          restitution for Victim 1 in this case.

15          What I would ask the court to do is give me 90 days,  
16          which the guidelines permit, for restitution to -- from  
17          sentencing we can do an additional 90 days to deal with the  
18          restitution issue. And Ms. Freese and the government can  
19          hopefully work out an agreement on what that issue is, and, if  
20          not, we will litigate what the appropriate restitution amount  
21          would be for Victim 1.

22          But I would be completely derelict in my duty if I  
23          didn't try to get restitution for Victim 1 from this defendant  
24          in particular.

25          THE COURT: Okay. Ms. Freese.

1           MS. FREESE: Yes, Your Honor, under all of the  
2 circumstances, we understand. We don't have an objection to  
3 the request.

4           THE COURT: All right. Is there anything else for the  
5 record?

6           MS. FREESE: I don't believe so, Your Honor. I  
7 believe that concludes it. Thank you very much.

8           THE COURT: Thank you, counsel.

9           COURTROOM DEPUTY: Court is adjourned.

10          *(Whereupon, the proceedings were adjourned at 5:50 p.m.)*  
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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Lori A. Shuey, Federal Certified Realtime Reporter, in and for the United States District Court for the Middle District of Pennsylvania, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-captioned matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated in Harrisburg, Pennsylvania, this 31st day of December, 2017.

**/s/ Lori A. Shuey**

Lori A. Shuey  
Federal Certified Realtime Reporter